TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 115.

ARTHUR E. APPLEYARD, APPELLANT,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED SEPTEMBER 9, 1905.

(19,901.)

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1 *Transcript of Record of Circuit Court.*

UNITED STATES OF AMERICA, *District of Massachusetts, ss:*

At a Circuit Court of the United States for the First Circuit begun and holden at Boston within and for the District of Massachusetts, on the last Tuesday of February, being the twenty eighth day of February, in the year of our Lord one thousand nine hundred and five, before the Honorable William L. Putnam, Circuit Judge.

No. 1559, Law Docket.

ARTHUR E. APPLEYARD, Petitioner for Writ of *Habeas Corpus.*

The Petition for a Writ of *Habeas Corpus* in this cause is filed in the clerk's office on the eighteenth day of April, A. D. 1905, and is in the words and figures following:

2 *Petition.*

(Filed April 18, 1905.)

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

To the Honorable the Judges of the Circuit Court of the United States:

Respectfully represents your petitioner, Arthur E. Appleyard, of Millis, in the County of Norfolk, in said District of Massachusetts, that he is unlawfully imprisoned, detained, confined and restrained of his liberty at Boston, in the County of Suffolk, in said District of Massachusetts, by Frederick A. Rhoades, a member of the District Police of the Commonwealth of Massachusetts, and is now in the custody of said Frederick A. Rhoades, in said Boston, in said County of Suffolk.

Your petitioner says that said imprisonment, detention, confinement, restraint and deprivation of his liberty are illegal; that your petitioner is held as he is informed and believes, and so alleges, under a pretense of a certain warrant or order issued by His Excellency the Governor of the Commonwealth of Massachusetts, upon the request of his Excellency the Governor of the State of New York, for the alleged crime of grand larceny, a copy of said warrant being hereto annexed, marked "A" and made a part hereof.

Your petitioner says that said warrant and order were issued without authority of law and contrary to the Constitution and laws of the United States and of this Commonwealth, and especially contrary to Section 2, Article 4, of the Constitution of the United States, and

of Section 5278 of the Revised Statutes of the United States,
3 in that your petitioner is not a fugitive from justice.

Wherefore your petitioner prays that a writ of *habeas corpus* may issue, and for such other relief as to your Honors may seem meet and proper, to the end that your complainant may obtain his liberty.

ARTHUR E. APPLEYARD.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

BOSTON, *April 18th,* 1905.

Then personally appeared the above named Arthur E. Appleyard and made oath that he has read the foregoing petition and that the facts therein set forth are true, to the best of his knowledge and belief, before me,

FRED H. WILLIAMS,
[SEAL.] *Notary Public.*

"A."

COMMONWEALTH OF MASSACHUSETTS:

His Excellency William L. Douglas, Governor of the Commonwealth, to the Sheriffs, Deputy Sheriffs, District
[SEAL.] Police, and other officers of and in the several
William L. Douglas. cities and counties of this Commonwealth:

Whereas, It has been represented to me by the Governor of the State of New York that Arthur E. Appleyard stands charged with the crime of Grand Larceny First Degree, which he certifies to be a crime under the Laws of said State, committed in the County of Erie in said State, and that he has fled from the justice of said
4 State and has taken refuge in this Commonwealth, and the said Governor of the State of New York having, in pursuance of the Constitution and Laws of the United States, demanded of me that I shall cause the said Arthur E. Appleyard to be arrested and delivered to James Holmes, who is duly authorized to receive him into his custody, and convey him back to the said State of New York:

And whereas, the said representation and demand is accompanied by certain documents whereby the said Arthur E. Appleyard is shown to have been duly charged with the said crime, and with having fled from said State of New York, and taken refuge in this Commonwealth, which are duly certified by the said Governor of New York to be authentic and duly authenticated:

Wherefore, you are required to arrest and secure the said Arthur E. Appleyard wherever he may be found within this Commonwealth, and afford him such opportunity to sue out a writ of *habeas corpus* as is prescribed by the laws of this Commonwealth, and to thereafter deliver him into the custody of the said James Holmes to be taken back to the said State of New York from which he fled, pursuant to the said requisition; all of which shall be without charge

to this Commonwealth; and also to return this warrant and make return to the Secretary of the Commonwealth, within thirty days from the date hereof, of all your proceedings had thereunder, and of all facts and circumstances relating thereto.

In witness whereof, I have hereunto signed my name and
5 caused the Seal of the Commonwealth to be affixed, this twenty first day of March in the year of our Lord one thousand nine hundred and five.

By His Excellency the Governor:

WM. M. OLIN,
Secretary of the Commonwealth.

COMMONWEALTH OF MASSACHUSETTS:

OFFICE OF THE SECRETARY, BOSTON, *April* 18, 1905.

A true copy.

[SEAL.]

Witness the Great Seal of the Commonwealth.

ISAAC H. EDGETT,
Deputy Secretary of the Commonwealth.

Upon the filing of said petition a summons to show cause why said petition should not be granted is issued, returnable on the eighteenth day of April, 1905, at two o'clock P. M.

This cause thereupon came on to be heard upon the twentieth day of April, A. D. 1905, and after a full hearing the following Writ of *Habeas Corpus* was issued:

Writ of Habeas Corpus.

April 20, 1905.

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

[L. S.]

The President of the United States of America to Frederick A. Rhoades, a member of the District *of the District* Police of the Commonwealth of Massachusetts, Greeting:

We command you that the body of Arthur E. Appleyard, by you restrained of his liberty, as it is said, you take and have before our Judges of our Circuit Court of the United States at the United
6 States Court House in Boston, in said District, forthwith to do and receive what our said Court shall then and there consider concerning him in this behalf, and then and there show cause, (if any you have), of the taking and detaining of the said Arthur E. Appleyard.

And have you there this writ with your doings therein.

Witness, the Honorable Melville W. Fuller, at Boston, aforesaid,

the twentieth day of April, in the year of our Lord one thousand nine hundred and five.

BENJ. H. BRADLEE,
Deputy Clerk.

On the twenty second day of said April, the following Return on said Writ of *Habeas Corpus* is made:

Return on Writ of Habeas Corpus.

MASSACHUSETTS DISTRICT, *ss:*

BOSTON, MASS., *April 22nd,* 1905.

In obedience to the command of the within writ directed to me by the Circuit Court of the United States, and in pursuance of the precept therein contained, I have the body of Arthur E. Appleyard as within mentioned before said Circuit Court of the United States.

FREDERICK A. RHOADES,
District Police Officer of Mass.

7 *Return of Frederick A. Rhoades, District Police Officer of Massachusetts.*

(Filed April 22, 1905.)

Frederick A. Rhoades, District Police Officer of Massachusetts, avers and returns to the writ heretofore issued in this case that the petitioner, Arthur E. Appleyard, is lawfully in his custody by virtue of a warrant issued by the Governor of the Commonwealth of Massachusetts upon the request of the Governor of the State of New York, a copy of which warrant is included in the petition herein and may be referred to as a part of this return, on the ground that the said Arthur E. Appleyard is within the State of Massachusetts as a fugitive from justice from the State of New York under an indictment charging him with the crime of grand larceny in the first degree, a crime committed by him within the State of New York against the laws of the State of New York, the papers accompanying the demand of said Governor having been certified by him as authentic, and duly authenticated in accordance with the laws of the State of New York.

Frederick A. Rhoades further returns that upon such demand by the Governor of New York, the Governor of Massachusetts forthwith required the attorney-general of Massachusetts to investigate the grounds thereof and report to him, the Governor of Massachusetts, all the material facts which came to his knowledge, with an abstract of the evidence in the case, and with an opinion as to the legality or expediency of complying with the demand, all in accordance with section 12 of chapter 217 of the Revised Laws of Massachusetts. A copy of said request is hereto annexed and marked "Exhibit
8 A." That thereupon the attorney general of Massachusetts did investigate the grounds of the demand and report to the

Governor of Massachusetts in accordance with said statute. A copy of his report is hereto annexed and marked "Exhibit B."

Frederick A. Rhoades further returns that after consideration of said report of the attorney general by the Governor, and after consideration of the evidence submitted therewith, the Governor of Missachusetts issued the warrant under which he holds the petitioner in custody.

Frederick A. Rhoades further returns that after the issuance of said warrant as aforesaid by the Governor of Massachusetts, the petitioner in this case applied for a writ of *habeas corpus* in the Supreme Judicial Court of Massachusetts, under section 14 of chapter 217 of the Revised Laws of Massachusetts; that after hearing and argument before said court the petitioner's application was denied and the petitioner was remanded to the custody of said Rhoades, to be held in accordance with the warrant issued by the Governor of Massachusetts.

FREDERICK A. RHOADES,
District Police Officer of Mass.

BOSTON, MASS., *April* 21, 1905.

Personally appeared before me the above named Frederick A. Rhoades and certified that the facts set forth in the above return are the true cause of his detention of the petitioner.

ALEXANDER M. ROBINSON,
Justice of the Peace.

9 EXHIBIT A.

COMMONWEALTH OF MASSACHUSETTS:

EXECUTIVE DEPARTMENT, BOSTON, *Feb.* 10, 1905.

To the Attorney General.

SIR: I am directed by His Excellency the Governor to refer to you for examination and report the accompanying requisition of the Executive of the State of New York for the arrest and extradition of Arthur E. Appleyard, an alleged fugitive from justice charged with the crime of grand larceny, first degree.

Very respectfully, your obedient servant,

E. F. HAMLIN,
Executive Secretary.

10 EXHIBIT B.

MARCH 21, 1905.

His Excellency William L. Douglas, Governor.

SIR: In the matter of the demand of the Executive of the State of New York upon Your Excellency for the arrest and extradition of Arthur E. Appleyard, an alleged fugitive from the justice of the State of New York, charged by indictment with the crime of grand larceny in the first degree, I have the honor to advise Your Excellency that I have investigated the grounds thereof, as set forth in the papers

annexed thereto and in other affidavits submitted to me in behalf of the alleged fugitive, and in conformity with the provisions of Revised Laws, chapter 217, section 12, beg to report to Your Excellency as follows:

In accordance with the request conveyed to me in the reference by Your Excellency, full hearing has been given to counsel for the alleged fugitive as well as to the District Attorney for Erie County in the State of New York, who appeared in support of the sufficiency and regularity of the papers accompanying the demand of the Executive of that state, and evidence has been introduced in behalf of the alleged fugitive in the form of affidavits tending to contradict certain allegations made in the papers annexed to the demand for extradition, which affidavits, together with the transcripts of the arguments made at the hearing, are herewith submitted for your Excellency's consideration.

Although the formal sufficiency of the papers accompanying the demand of the Executive of the State of New York for the
11 extradition of the alleged fugitive was not conceded by counsel for the accused, no specific objection was made thereto, and I am of opinion that such papers appear to be regular and in proper form, and to afford no ground for refusing to honor the demand.

Counsel for the alleged fugitive, however, most forcibly insisted upon certain broader and more general objections to compliance with the demand of the Executive of the State of New York, which merit the most careful and serious consideration, and which are substantially as follows:

"1. Because it appears that the accused has not fled from justice in the constitutional sense of the words.

2. Because the evidence shows that the accused was not within the State of New York when the alleged crime was committed.

3. Because the accused left the State of New York with the consent of the bank for whose benefit the present prosecution is instituted.

4. Because the evidence conclusively shows that the indictment for the alleged crime was obtained upon false affidavits, and because Emery's affidavit does not support the indictment as required by Revised Laws, chapter 217, section 11.

5. Because the Governor in the exercise of his discretion should find this is not a proper case in which to comply with the demand of the Governor of New York."

The crime against the laws of the State of New York with which Arthur E. Appleyard is charged is grand larceny in the first degree. The indictment, in substance, sets forth that the said Appleyard obtained on the 18th day of May, 1904, from The German Bank of Buffalo, through its President, who was fully empowered thereto by the by-laws of such bank, the sum of $49,250.00, giving in return therefor his note dated May 14, 1904, for $50,000.00, together with seventy bonds of The Ohio Union Traction Company as collateral, which corporation he represented to one Richard Emery, the
12 President of The German Bank, owned and controlled certain other railroad corporations organized under the laws of the State of Ohio, and that the bonds of The Ohio Union Traction

Company were each worth $750.00, and were full security for the payment of the note above referred to. The indictment further alleges that The German Bank, and Richard Emery, its President, believing the false pretences and representations made by Arthur E. Appleyard, and being deceived thereby, were induced, by reason of such false pretences and representations, to deliver, and did deliver, to the said Appleyard $49,250.00 in money of the property of The German Bank, and that Appleyard feloniously received and obtained that amount "with the intent feloniously to deprive and defraud the said The German Bank, said body corporate, of its property and of the use and benefit thereof, and to appropriate the same to his own use; and the said Arthur E. Appleyard did then and there feloniously appropriate to his own use the said $49,250.00 of the property, moneys, valuable things, goods and chattels, personal property and effects of the said The German Bank, said body corporate, with intent to feloniously deprive and divert the said The German Bank, the body corporate, of its property and of the use and benefit thereof."

A second count in the indictment charges Appleyard with feloniously stealing, taking and carrying away $49,250.00 in money, of a kind, number and denomination unknown to the grand jury, contrary to the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity.

The sworn evidence which is annexed to the demand of the Executive of the State of New York consists of certain affidavits,
13 the first of which is that of Richard Emery, who deposes that he became the President of The German Bank on April 30, 1904, and that as such President it was his duty to pass upon all loans and discounts of such bank; that on May 18, 1904, Arthur E. Appleyard was in the City of Buffalo, in the State of New York, and presented to Emery, as President of The German Bank, a note dated May 14, 1904, for the sum of $50,000.00, payable to The German Bank and signed by Appleyard, and requested Emery to have such note discounted by the Bank and placed to his credit; that at the same time Appleyard delivered to the deponent as collateral security to such loan seventy bonds each of the par value of $1000.00 of The Ohio Union Traction Company, duly certified by the Security Trust Company of Camden, New Jersey, representing to the deponent that The Ohio Union Traction Company owned and controlled all of the properties, rights and franchises previously owned by several corporations organized under the laws of Ohio, such bonds being alleged by Appleyard to be worth not less than $750.00 each, and to be absolutely good; and that, "deponent believing said representations and statements so made to him in regard to the value of said bonds of said The Ohio Union Traction Company, and relying thereon, did loan, advance and pay to, through said The German Bank, the defendant, Arthur E. Appleyard, the sum of $49,250.00; that deponent now knows of his own knowledge that said The Ohio Union Traction Company did not, on the 18th day of May, 1904, own or control any of the rights, franchises and properties owned and controlled by the above named corporations; and

that said representations so made by the defendant, Arthur E. Appleyard, to this deponent at the time said note was so discounted was and were false and in all respects untrue."

14 The affidavit then proceeds as follows: "That the age of the defendant is about forty one years, and his occupation is that of a banker, broker and promoter; that deponent knows of his own knowledge, by reason of the premises aforesaid, that the defendant, Arthur E. Appleyard, was in the City of Buffalo on the 18th day of May, 1904, and that he has since departed therefrom; and the deponent is informed and verily believes that said defendant is now in the State of Massachusetts, and he knows that his residence and business address is No. 50 State Street, Boston, Massachusetts, and his home address is 1674 Beacon Street, Brookline, Massachusetts; and that deponent believes the said defendant, Arthur E. Appleyard, departed from this state on or about the 5th day of December, 1904."

An affidavit of Charles F. Coaney, after alleging that the deponent was at one time secretary to Appleyard, and also secretary of the several railroad corporations the franchises of which were alleged to have been transferred to The Ohio Union Traction Company, and that on the 18th day of May, 1904, none of such corporations were controlled by The Ohio Union Traction Company, already referred to, or have ever been transferred to such company, proceeds as follows: "That he knows of his own knowledge that the said defendant, Arthur E. Appleyard, was in the City of Buffalo and State of New York on the 18th day of May, 1904, and has since departed therefrom."

James Holmes, a Detective Sergeant of the City of Buffalo, deposes on information and belief "that the defendant was in the City of Buffalo about the time the crime is alleged to have been

15 committed, * * * and that the defendant is now in the City of Boston, State of Massachusetts."

Edward E. Coatsworth, District Attorney of Erie County, on information and belief deposes that the defendant is now in the City of Boston, State of Massachusetts.

James T. Twitty deposes that he is a resident of Buffalo, engaged in conducting a riding academy, and has been so engaged for a period of five years; that he is personally acquainted with Arthur E. Appleyard and became acquainted with him during the month of May, 1904, when Appleyard, upon several occasions, hired and rented of him saddle-horses; and from his books and records it appears that Appleyard, on May 18, 1904, rented from the deponent a saddle-horse which was used for about an hour and duly paid for.

The alleged fugitive, on his own behalf, submitted an affidavit setting forth his occupation and business, which is that of a broker with an office in the City of Boston, and other offices in Philadelphia and Cincinnati, and that he has been engaged in the construction of gas and electric plants and street railways, in which he was a controlling owner.

The affidavit further contains a detailed account of the transactions which are alleged in the indictment to constitute the crime with

which the person demanded is charged, and tends to show that such transactions were entered upon upon May 14, 1904, Appleyard then being in his office at Boston, and were completed on May 17, 1904, and that during the course of such transactions Appleyard was not within the State of New York. The affiant alleges certain specific dates subsequent to May 18, 1904, up to and including De-
16 cember 5th of the same year, upon which he visited the State of New York in connection with his business, and that the visits so made were made openly and without attempt at concealment.

The general effect of this affidavit, which is not more fully quoted for the reason that it is submitted with this report for Your Excellency's consideration, is to deny that the acts therein set forth constitute a crime, and that the alleged fugitive entered upon them with any criminal intent or left the jurisdiction of the State of New York to avoid possible criminal proceedings based upon them.

The other affidavits submitted as evidence in behalf of the alleged fugitive are:

An affidavit of Herbert M. Jenks, who deposes that he was the representative of Appleyard in Buffalo in the matter of the purchase of The German Bank and in his personal business, and that in connection with the latter he delivered the collateral before referred to to The German Bank, such delivery being on May 17, 1904. Annexed to this affidavit are certain records of The Ohio Union Traction Company tending to show that Emery, the President of The German Bank, was familiar with the status and property of that corporation until a date subsequent to that upon which it is charged the alleged misrepresentations to him regarding such corporation were made.

Affidavits of Dean Sage, of New York City, Frederick B. Van Vorst, of Hackensack, N. J., Fred A. Reed, of New York, Alonzo E. Locke, of Boston, Mrs. Francis C. Appleyard, of Millis, Mass., Lawrence McCormick, of Philadelphia, George W. Swett, of Philadelphia, and Albert S. Carter, of Washington, D. C., all tend-
17 ing to show that on certain specific dates subsequent to the 18th of May, and prior to the 6th day of December, 1904, the alleged fugitive was openly present within the jurisdiction of the State of New York.

An affidavit of James T. Twitty tending to contradict or explain the affidavit of the same person annexed to the demand of the Executive of the State of New York and hereinbefore referred to. The affidavit sets forth that Appleyard, Coaney and Emery were in the habit of hiring horses of the deponent for riding; that in so ordering, they were accustomed to use each other's names, and that this might have been the case upon the date referred to in the former affidavit by deponent; and that deponent has no personal knowledge whether or not Appleyard was present upon that particular occasion.

An affidavit of A. Joseph Kingsbury, a director of the Camden National Bank, of Camden, in the State of New Jersey, stating that Charles F. Coaney, whose affidavit was annexed to the demand of the Executive of the State of New York, and tended to show that the

person demanded was in fact a fugitive from justice, was also a director in the same bank, and on May 18, 1904, between the hours of eleven and twelve o'clock, was present with the deponent at a meeting of the board of directors of such bank.

An affidavit of Guy M. Walker, of New York, tending to throw doubt upon the good faith of the affidavit of Emery, annexed to the demand of the Executive of the State of New York, by setting forth a statement made by Emery to deponent to the effect that he had been promised immunity from prosecution in connection with the failure of The German Bank if he would make a full
18 and detailed disclosure of the facts in connection therewith: and further stating that such disclosure was unsatisfactory to the prosecuting authorities for the reason that it failed to incriminate anybody.

The duty of the Executive of the State upon which demand for rendition is made imposed by a fundamental requirement of the federal Constitution. Its terms are clear, indeed peremptory. "A person charged in any state with treason, felony or other crime who shall flee from justice and be found in another state shall, on demand, * * * be delivered up to be removed to the state having jurisdiction of the crime." If the predicates of this constitutional requirement appear, I am of the opinion that the duty of the Executive to honor the requisition is inevitable; nor do I conceive that the performance of this duty is in any true sense discretionary.

Pursuant to the provisions of the United States Constitution, a federal statute has undertaken to define the rights of a person whose rendition is demanded, as well as to define the obligations of the Executive upon whom the demand is made. Revised Statutes of United States, section 5278:—

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs
19 or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory."

Any legislative enactment of the States in relation to interstate extradition must not be inconsistent with the constitutional laws of the United States. Statutory enactment in the Commonwealth of

Massachusetts is found in Revised Laws, chapter 217, sections 11 to 14, inclusive:—

"SECTION 11. The governor, in any case which is authorized by the constitution and laws of the United States, may, upon demand, deliver to the executive of any other state or territory any person charged therein with treason, felony or other crime; or may, upon application, appoint an agent to demand of the executive authority of any other state or territory any such offender fleeing from the justice of this commonwealth. Such demand or application shall be accompanied by sworn evidence that the person charged is a fugitive from justice and by a duly attested copy of an indictment or complaint made before a court or magistrate authorized to receive it. Such complaint shall be accompanied by affidavits to the facts constituting the crime charged by persons who have actual knowledge thereof, and by such further evidence as the governor may require.

SECTION 12. Upon such demand or application, the attorney general or a district attorney shall, if the governor so requires, forthwith investigate the grounds thereof and report to the governor all the material facts which may come to his knowledge, with an abstract of the evidence in the case, and, in case of a person demanded, whether he is held in custody or is under recognizance to answer for a crime against the laws of this commonwealth or of the United States or by force of any civil process, with an opinion as to the legality or expediency of complying therewith.

SECTION 13. If the governor is satisfied that the demand conforms to law and ought to be complied with, he shall issue his warrant, under the seal of the commonwealth, to an officer authorized to serve warrants in criminal cases, directing him at the expense of the agent who makes the demand, at a time designated in the warrant, to take and transport such person to the boundary line of this commonwealth and there deliver him to such agent. Such officer may require aid as in criminal cases.

SECTION 14. A person who is arrested upon such warrant shall not be delivered to such agent of a state or territory until he has been notified of the demand for his surrender and has had an opportunity to apply for a writ of *habeas corpus*, if he claims such right of the officer who makes the arrest. If such writ is applied for, notice thereof and of the time and place of hearing shall be given to the attorney general or district attorney for the district in which the arrest is made. An officer who delivers a person in his custody upon such warrant to such agent for extradition without having compiled with the provisions of this section shall forfeit not more than one thousand dollars."

The law of Massachusetts has so provided that the Governor may, in any case which is authorized by the Constitution and laws of the United States, upon demand, deliver to the Executive of any other State or Territory any person charged therein with treason, felony or other crime. The word "may" must be construed not as merely permissive but as mandatory, otherwise the statute would be inconsistent with the federal law and so, to that extent, without validity.

It is to be observed that the statue above quoted does not expressly specify that the person whose rendition is sought must have fled from the jurisdiction of the demanding state. The only defined status as a predicate of the exercise of the Governor's authority is that the accused must have been charged in the demanding State with treason, felony or other crime. Were it not then for the provision that executive action is to be confined to such case as is authorized by the Constitution and laws of the United States, the important, perhaps vital, question in the case now presented, namely, whether the accused has fled, or is a fugitive from the justice of the State of New York, might be entirely removed from consideration, but I am of opinion that unless the accused shall have fled or be a fugitive from the justice of the demanding State, within the meaning og the federal Constitution and statute, the Executive cannot be required, nor is he even empowered, to honor the requisition. Before extradition can be granted, it must be found by the Executive of this Commonwealth as a fact that the accused has so fled
21 or is such fugitive. This issue does not, in my opinion, admit of the exercise of any mere discretion, but must be determined upon lines of competent evidence and under the rules of law as established by judicial authority. If the accused is a fugitive within the contemplation of the law, then the demanding State has an undeniable right to his rendition. If he is not such a fugitive, then, as matter of like right, the Executive must refuse his rendition. To hold otherwise would leave the rights of the demanding State and the individual to the uncontrolled discretion of the Chief Executive of any State upon the facts as they appeared in the different cases.

I am of opinion that in so far as the question is one of fact, its decision, as above indicated, is, by the finding of the Executive, conclusive. It is clear, therefore, that in making this responsible decision, the Executive must have no less regard to the constitutional rights of the demanding State than of the like rights of the accused. Neither can be preferred before the other in the consideration of the question at issue. The allegation in the demand that the accused has committed crime within the demanding State and that his extradition is sought for the purpose of trying him for such offence before the only courts which in the premises have jurisdiction, is entitled to full faith and credit. So, even a citizen of this Commonwealth cannot be heard to insistently complain that he is being sent among strangers to be subjected to the jurisdiction of foreign tribunals, for it is to be assumed that he chose that foreign field as the scene of his alleged offending.

Before taking up the consideration of the issues of fact
22 before the Executive, it may be necessary to consider what allegations or recitals of or accompanying the demand of the State of New York are to be taken as indisputable and conclusive. I am of opinion that the demand for extradition is in proper form and that no valid objection lies either to matters of form or because of the omission of any material or essential statement. It must be assumed that an indictment, charging a crime committed by the ac-

cused within the State of New York, has been found and is now pending in the courts of competent jurisdiction in that State, and that, therefore, the accused is charged in the State of New York with the commission of crime within the intent and letter of the Constitution and the laws; and such being the case, it is not necessary that affidavits of fact in support of the charge alleged be submitted for consideration here. Such affidavits are, in my opinion, if required at all, required only where the pending charge is by complaint and not by an indictment returned by the grand jury. If, under the Massachusetts statute, there must be an affidavit accompanying the requisition from another State that the accused was within the demanding State at the time of the alleged offence, affidavits to that effect and in proper form have been duly presented. Such affidavits, however, are, in my opinion, to be considered only as evidence tending to prove the essential fact that the accused is a fugitive, and so open to rebuttal and contradiction, and are conclusive, if at all, only when uncontroverted.

The affivadits of Richard Emery and Charles F. Coaney distinctly and affirmatively state that the accused was in New York at the place and at the time of the alleged crime. Other affidavits in-
23 ferentially stating the same fact are also presented.

As against these affidavits, there is no statement directly denying that the accused was in New York at the time and place alleged in the indictment; nor, though the accused has voluntarily filed an exhaustive statement in his own behalf by affidavit, does he deny that he was in the City of Buffalo at the time of the offence charged in the indictment. That indictment charges that the offence laid was committed at Buffalo on the 18th day of May, 1904. It is contended, however, by the accused, that the incident upon which the indictment is founded occurred on an earlier day when he was not within the State of New York, and offers evidence, which is controverted, to support the contention that he was within this Commonwealth on the day which he assumes to be the time of the offence, if any was committed. But I am clearly of opinion that it must be assumed that the date and place specified in the indictment define the offence charged and relied upon by the State of New York, and that the court having jurisdiction of such offence alone can inquire or determine whether the time charged is in fact the time of the offence, and that the consideration of the officers of this Commonwealth must be confined to the date laid in the indictment. The contentions of fact and law suggested by the accused may be matter of material, perhaps conclusive, importance upon his defence to the charge made against him, but are open only for consideration in the court having jurisdiction of the cause.

I am therefore of opinion, and so submit for the consideration of Your Excellency, that upon the affidavits and evidence presented the conclusion is certainly well warranted, if not necessary, that
24 the Executive is and ought to be satisfied that the accused was in the demanding State at the time and place of the offence charged in the indictment.

Having due regard for the opinion of former Attorneys-General of this Commonwealth and adopting what I understand to be their

true intent and meaning, I am led to the conclusion that the Executive in dealing with the question of fact whether or not the accused is a fugitive from justice, may exercise a discretion but such discretion must be confined within certain clear and definite limitations. I think it cannot be doubted that this question whether the accused is a fugitive from justice, in the contemplation of law is in part, at least, one of fact to be determined by the Governor to whom the demand for extradition is presented. While some of my predecessors in office have made use of phrases that might seem to hold that an absolute discretion of the Executive may be decisive upon this question, yet the plain intent and meaning of such opinions appear to me to go no further than to hold that the Executive may exercise a discretion in determining the extent or form of proof of the fact at issue, but offer no suggestion of support to the proposition that he may, in his discretion, ignore or exaggerate the true probative force of the evidence presented. The weight of judicial authority distinctly supports this view. Indeed, were any other rule to obtain, there would be no assured right of rendition in any case, but the issue in each case would be relegated to the arbitrary variant ruling of different Executives without reference to any definite standards by which the safety and right of the accused should be preserved to him, or the constitutional obligation of interstate rendition be assured or maintained.

The construction of the phrase "flee from justice" and of the term "fugitive" is a matter of law, and our own court, in Kingsbury's case, 106 Mass., 227, has interpreted their meaning, holding the material facts to be found, as fixing the status of a person as a fugitive, to be "that the *rp*isoner is charged with crime in the manner prescribed, and has gone beyond the jurisdiction of the state, so that there has been no reasonable opportunity to prosecute him after the facts were known. The fact that he returned to his permanent home cannot be material."

The Supreme Court of the United States in the case of Roberts *v.* Reilly, 116 U. S., 80-98, has again clearly and conclusively defined the issues upon which the status of the alleged fiugitive under the Federal law is to be determined, the opinion concluding as follows:

"On the question of fact, whether the appellant was a fugitive from the justice of the State of New York, there was direct and positive proof before the governor of Georgia, forming part of the record in this proceeding. There is no other evid*d*ence in the record which contradicts it. The appellant in his affidavit does not deny that he was in the State of New York about the date of the day laid in the indictment when the offence is alleged to have been committed, and states, by way of inference only that he was not in that State on that very day; and the fact that he has not been within the State since the finding of the indictment is irrelevant and immaterial. To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but

simply that having within a State committed that which by its laws constitutes a crime, when he is sought to be subject to its criminal process to answer for his offence, he has left its jurisdiction and is found within the territory of another."

In the light of this indisputable authority, I am unable to approve or adopt the contention forcibly and earnestly pre-
26 sented by counsel for the alleged fugitive to the effect that before his rendition can be required, Your Excellency must find as a fact that, with consciousness of guilt, the accused immediately fled from the jurisdiction of his crime with the specific intent and purpose to escape and avoid prosecution thereon. The case of Streep *v.* The United States, 160 U. S., 128, 133, 135, is cited by counsel for the accused, and while it holds that "it is sufficient that there is a flight with the intention of avoiding being prosecuted" * * * it is to be observed that the questions before the court was under Section 1045 of the Revised Statutes of the United States, and it is declared by the court that that section must receive the same construction as that given to Section 5278 (hereinbefore quoted) by the decision in Roberts *v.* Reilly, which is thus expressly affirmed. It is to be further noted that Mr. Justice Gray, in his opinion in Streep *v.* The United States, seriously impairs any authority that the opinion of Judge Dillon, United States *v.* O'Brien, 3 Dillon, 381, cited in behalf of the accused, might have had, by his comment that the decision in the O'Brien case "appears to us to have proceeded upon too narrow a construction of the section, inconsistent alike with its words and with its purpose."

The many cases cited in behalf of the accused, in so far as they seem to be or are inconsistent with the decision of the Supreme Court of the United States and with similar decisions in our court of last appeal, must be disregarded by me as affecting the conclusion which Your Excellency's requirement demands of me.

Upon the evidence presented, all of which is herewith transmitted, I am of opinion that Your Excellency may well find, if, in-
27 deed, the evidence does not compel such finding, that the accused, Arthur E. Appleyard, was within the State of New York at the time and place of the crime charged against him in the indictment pending in the courts of that State; that when sought, to be subjected to the criminal process of that State to answer for his alleged offence, he is found to have left its jurisdiction and to be within this Commonwealth. Under such finding of fact, I am clearly of opinion that the said Appleyard must be held to be a fugitive from justice in contemplation of the Federal law and that of this Commonwealth, and that the State of New York, upon the due demand of its Executive, is entitled to his rendition.

It appears from the evidence that after the time of the commission of the alleged crime in the State of New York, the alleged fugitive returned there in the course of his ordinary business and then again came away and returned to this State, and it is argued that such return to and new departure from the State of New York could not constitute the accused a fugitive from justice, and decisions of high authority are cited by the counsel, notably that of Hyatt *v.* Cockran,

188 U. S., 691, in support of this contention. But it suffices to say that the conclusion I have reached and stated above and submitted to Your Excellency's consideration is in no wise inconsistent with the decision of the court in that case, which is to the effect that returning to and again departing from a jurisdiction cannot render a person a fugitive from justice if he were not such before. In other words, the court merely holds that if the accused were not in the State of the alleged offence at the time of its commission, his
28 subsequent return there cannot supply the want of that essential and necessary fact.

The accused should not be adjudged a fugitive merely because of his having returned to the place of his alleged offence subsequent to its commission and thence again departed. Unless Your Excellency is satisfied that in fact the accused was in the State of New York at the time of the commission of the alleged offence, he cannot be adjudged a fugitive even though after that time he were repeatedly within the State of the alleged crime.

I am of opinion that upon the evidence presented the accused may, and perhaps ought to be, found to be such fugitive because of the evidence that at the time of the alleged offence, he was in the State of New York and shortly or immediately thereafter left that State and came here. There is also evidence, which may well satisfy Your Excellency that the accused not anticipating any present proceedings against him, returned from time to time to the place of his alleged offending up to and until the fifth day of December, 1904, when, as the evidence tends to show, the criminality of his former act being under discussion or consideration, he left the State of New York and has not since gone within reach of the processes of its courts. There is no authority known to me holding that one who has committed a crime in one State and left its jurisdiction before the institution of any proceeding or his offence being known, may, by returning there subsequently and then again departing, render himself thereafter immune against any demand for his extradition.

The learned counsel for the accused has insisted, with apparent confidence, that because, as he contends, it appears upon the
29 evidence presented that the accused left the State of New York with the consent of the Bank "for whose benefit the pending prosecution is instituted" he cannot be adjudged a fugitive, but even if it be true that the evidence presented does establish that fact as claimed, it in no wise affects the only issues properly before Your Excellency for determination. Neither in fact nor as matter of law can it be assumed that the pending prosecution is for the exclusive benefit or within the control of the Bank or any other assumed private complainant. The rights of the public represented by the public authorities asserted by the Executive of New York, as declared by his official demand for rendition, can alone be considered by Your Excellency. Nor can the banking corporation assumed to have been the immediate victim of the alleged wrong-doing of the accused by condonation, compromise or waiver of the crime, stay or suspend the apprehension and prosecution of the offender.

It is contended in behalf of the accused that the evidence con-

clusively shows that the indictment was obtained upon false affidavits, and the affidavit of one Emery does not support the indictment, and that therefore, rendition should be refused.

But I am of opinion that the affidavits in evidence cannot be considered by Your Excellency as impairing the conclusive presumption which in this jurisdiction attaches to the indictment itself. No affidavits in its support are required. Its due certification by the Executive of New York renders it unimpeachable here. It may be added further that it is a wholly unwarranted assumption which would hold that the affidavits presented embrace
30 all the evidence upon which the indictment was found or upon which the prosecution is to rest.

It is urged by counsel for the accused that his rendition should be denied because Your Excellency ought, as matter of discretion, to find that the case is not a proper one in which to comply with the demand of the Governor of New York,

Upon this contention, I have the honor to respectfully advise Your Excellency that as I have construed the law, you have no such discretionary power as would justify your denial of the demand of the Governor of New York upon the general ground that you did not deem it proper to grant the requisition.

If the demand is sufficient in form, as I believe and advise Your Excellency it is, and if the requisite facts revealing the accused as a fugitive from justice appear by competent proof in evidence, in accordance with the requirements of the law as hereinabove referred to and considered, then the field of Your Excellency's discretionary consideration is past and the duty imposed by the Constitution of the United States upon the Executive of the State of Massachusetts would, as matter of law, require the surrender of the fugitive in accordance with the requisition of the Executive of the State of New York.

I am, therefore, constrained to advise Your Excellency that the papers accompanying the demand of the Executive of the State of New York for the arrest and extradition of Arthur E. Appleyard being regular and in proper form, there is, in my opinion no sufficient reason why Your Excellency should not honor the requisition.

I have the honor to be, with great respect,

Very truly yours,

(Signed) HERBERT PARKER,
Attorney-General.

31 STATE OF NEW YORK, EXECUTIVE CHAMBER.

The Governor of the State of New York to the Governor of the State of Massachusetts:

Whereas, It appears by the papers required by the Statutes of the United States, which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the Laws of this State, that Arthur E. Appleyard stand- charged with the crime of grand larceny, first degree, which I certify to be crime

under the Laws of this State, committed in the County of Erie, in this State, and it having been represented to me that he has fled from the justice of this State, and may have taken refuge in the State of Massachusetts.

Now, therefore, pursuant to the provision of the Constitution and the Laws of the United States in such case made and provided, I do hereby require that the said Arthur E. Appleyard be apprehended and delivered to James Holmes who is hereby authorized to receive and convey him to the State of New York, there to be dealt with according to Law.

32 In Witness Whereof, I have hereunto signed my name and affixed the privy Seal of the State, at the Capitol in the City of Albany, this seventh day of February, in the year of our Lord one thousand nine hundred and five.

[SEAL.] FRANK W. HIGGINS.

By the Governor:
FRANK E. PERLEY,
Secretary to the Governor.

Supreme Court, Erie County.

THE PEOPLE OF THE STATE OF NEW YORK
against
ARTHUR E. APPLEYARD.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

Richard Emory, being duly sworn says that he resides at No. 84 Tracy street, Buffalo, N. Y., and is by occupation an engineer and railroad manager; that heretofore and on the 30th day of April, 1904, at the City of Buffalo, N. Y., deponent without having had any previous experience in banking, and at the special instance and request of the defendant Arthur E. Appleyard, who at that time held and controlled a majority of the stock of the German Bank, a domestic banking corporation doing business in the

33 city of Buffalo, N. Y., was duly elected president of said German Bank and duly qualified as such and entered upon the discharge of his duties; that deponent has read the duly adopted By-Laws of said bank and knows that said by-laws provide that the President shall have full power and authority to pass upon all loans and discounts of said bank, and that had been the custom of said bank, and that deponent during the time that he was President of said bank did pass upon all deeds, loans and discounts of said bank; that deponent knows that the defendant Arthur E. Appleyard on the 30th day of April knew of said provision in said by-laws giving to the President of said bank full authority to pass upon and make all the loans and discounts of said bank; that deponent has been personally acquainted with the defendant Arthur E. Appleyard for a period of nearly two years and six months, and that previous to deponent's election as President of the German

Bank, deponent was general manager and director and officer of certain electric railways and street railways located in the State of Ohio, and that on or about the 28th day of March, 1904, deponent acted as one of the incorporators *to* a corporation organized under the laws of the State of Ohio, known as The Ohio Union Traction Company, which deponent was informed at or about that time by the defendant, Arthur E. Appleyard was to be a holding corporation for all of the electric railroad properties then owned or controlled by the defendant in the State of Ohio, more commonly known as the Appleyard System.

That heretofore and on the 18th day of May, 1904, and while deponent was President of said German Bank, the defendant
34 Arthur E. Appleyard was in the City of Buffalo, State of New York, and residing at the Iroquois Hotel in said city; that on said day the defendant Arthur E. Appleyard presented to deponent as President of the German Bank, a note bearing date the 14th day of May, 1904, for the sum of $50,000, payable to the German Bank and signed by the defendant and unindorsed and asked deponent to have the same discounted by the German Bank and placed to the credit of the said Appleyard, and at the same time offered, tendered and delivered to deponent as collateral security to such loan 70 bonds of the par value of $1,000 each of said Ohio Union Traction Company and duly certified by the Security Trust Company of Camden, New Jersey, and represented to deponent that said Ohio Union Traction Company owned and controlled all of the properties, rights and franchises formerly owned by the following named corporations organized under and by virtue of the laws of the State of Ohio, to wit: The Columbus, London and Springfield Railway Company, The Columbus, Grove City and Southwestern Railway Company, The Central Market Street Railway Company, The Dayton Springfield and Urbana Electric Railway Company, The Urbana Bellefontaine and Northern Railway Company, The Kenton & Southern Railway Company, and The Dayton Lebanon and Cincinnati Railway Company, and did further represent that said properties had been duly conveyed by The Ohio Union Traction Company to The Security Trust Company of Camden, New Jersey as collateral security to the issue of its bonds, and that said 70 bonds so tendered and delivered to deponent as aforesaid, were good and sufficient security for said loan of $50,000 and were worth at least 75, and that each of said bonds was worth not less than $750.00 *each*, and did further represent that said bonds were absolutely good
35 and that same had been placed as collateral in many other banks, and that deponent believing said representations and statements so made to him in regard to the value of the said bonds of said Ohio Union Traction Company, and relying thereon, did loan, advance and pay to, through said German Bank, the defendant Arthur E. Appleyard the sum of $49,250.00; that deponent now knows of his own knowledge that said Ohio Union Traction Company did not on the 18th day of May, 1904, own or control any of the rights, franchises and properties owned and controlled by the

above named corporations, and that said representations so made by the defendant Arthur E. Appleyard to this deponent at the time said note was so discounted was and were false and in all respects untrue.

That the age of the defendant is about 41 years, and his occupation is that of a banker, broker and promoter; that deponent knows of his own knowledge by reason of the premises aforesaid that the defendant Arthur E. Appleyard was in the city of Buffalo on the 18th day of May, 1904, and that he has since departed therefrom, and deponent is informed and verily believes that said defendant is now in the State of Massachusetts, and he knows that his residence and business address is number 50 State Street, Boston, Massachusetts, and his home address is 1674 Beacon Street, Brookline, Massachusetts, and that deponent believes the said defendant Arthur E. Appleyard departed from this State on or about the 5th day of December, 1904.

RICHARD EMORY.

Subscribed and sworn to before me this 3rd day of February, 1905.

J. A. STONE,
Commissioner of Deeds in and for Buffalo, N. Y.

36 *Affidavit of Commissioner.*

STATE OF NEW YORK,
Erie County Clerk's Office, ss:

I, John H. Price, Clerk of said County and of the Courts thereof, the same being Courts of Record, do hereby certify that J. A. Stone, before whom the annexed affidavit was taken, and whose name is subscribed in the certificate of proof thereof, was at the time of taking the same a Commissioner of Deeds, for the City of Buffalo, in said County, duly sworn and acting as such and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe the signature thereto to be his genuine signature.

[SEAL.]

In testimony whereof, I have her-unto set my hand and affixed the Seal of said County, at Buffalo, this 5th day of February, A. D. 1905.

JOHN H. PRICE, *Clerk,*
By CARL J. SEYMOUR,
Deputy Clerk.

Supreme Court, Erie County.

THE PEOPLE OF THE STATE OF NEW YORK
against
ARTHUR E. APPLEYARD.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

Charles F. Coaney, being duly sworn, deposes and says: That he resides at Summit, New Jersey; that he is personally acquainted with Arthur E. Appleyard, the above named defendant, and has known him for a period of nearly two years; that deponent was
37 in the employ of the said defendant Arthur E. Appleyard from April 21st, 1903, to about the 1st of September, 1904, as secretary to said defendant Arthur E. Appleyard; and that deponent was also secretary of the following corporations, duly organized and existing under and by virtue of the laws of the State of Ohio: to wit, The Dayton, Lebanon & Cincinnati Railroad; Columbus, London & Springfield Railway; Kenton & Southern Railway Company; Dayton, Springfield & Urbana Electric Railway; Central Market Street Railway Company; and the Columbus, Grove City and Southwestern Railway Company, and was also secretary of the Ohio Union Traction Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio; that deponent is personally familiar with the properties owned and controlled by the above named corporations, with the exception of the Ohio Union Traction Company; that deponent knows of his own knowledge that none of the properties owned and controlled by the above named corporations were on the eighteenth day of May, 1904, owned and controlled by said Ohio Union Traction Company, and further knows that none of the properties owned and controlled by the above named corporations have at any time ever been transferred to said Ohio Union Traction Company, and deponent further knows of his own knowledge that said Ohio Union Traction Company, said body corporate, owns and controls no property whatsoever.

That deponent believes the age of this defendant Arthur E. Appleyard is about forty one years, and his occupation is that of a banker, broker and promoter; that he knows of his own knowledge that the said defendant, Arthur E. Appleyard, was in the City of Buffalo, and State of New York, on the eighteenth day of
38 May, 1904, and has since departed therefrom and deponent verily believes the said defendant is now within the State of Massachusetts; that deponent knows of his own knowledge that the said defendant's business address is at 50 State Street, Boston, Massachusetts, and his home address is 1674 Beacon Street, Brookline, Massachusetts; and that deponent verily believes the said defendant departed from this State on or about the fifth day of December, 1904.

CHARLES F. COANEY.

Sworn to before me this 3rd day of February, 1905.

J. A. STONE,
Commissioner of Deeds in and for Buffalo, N. Y.

Affidavit of Commissioner.

STATE OF NEW YORK,
Erie County Clerk's Office, ss:

I, John H. Price, Clerk of said County and of the Courts thereof, the same being Courts of Record, do hereby certify that J. [SEAL.] A. Stone, before whom the annexed affidavit was taken, and whose name is subscribed in the certificate of proof thereof, was at the time of taking the same, a Commissioner of Deeds, for the City of Buffalo, in said County, duly sworn and acting as such and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe the signature thereto to be his genuine signature.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said County, at Buffalo, this 4th day of February, A. D. 1905.

JOHN H. PRICE, *Clerk*,
By CARL J. SEYMOUR,
Deputy Clerk.

39 Supreme Court, Erie County.

THE PEOPLE OF THE STATE OF NEW YORK
against
ARTHUR E. APPLEYARD.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

James Holmes, being duly sworn, deposes and says: That he is a police officer of the city of Buffalo, to wit: a detective-sergeant, and that he is entrusted with the warrant for the arrest of one Arthur E. Appleyard.

That deponent on information and belief swears that the defendant is of the age of 41 years; that the defendant was in the city of Buffalo about the time the crime is alleged to have been committed.

Deponent further swears on information and belief that the defendant is now in the city of Boston, State of Massachusetts.

JAMES HOLMES.

Sworn to before me this 3rd day of February, 1905.

J. A. STONE,
Commissioner of Deeds in and for Buffalo, N. Y.

40 *Affidavit of Commissioner.*

STATE OF NEW YORK,
Erie County Clerk's Office, ss:

I, John H. Price, Clerk of said County and of the Courts thereof, the same being Courts of Record, do hereby certify that J. A. Stone, before whom the annexed affidavit was taken, and whose name is subscribed in the certificate of proof thereof, [SEAL.] was at the time of taking the same, a Commissioner of Deeds, for the City of Buffalo, in said County, duly sworn and acting as such and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe the signature thereto to be his genuine signature.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said County, at Buffalo, this 4th day of February, A. D. 190-.

JOHN H. PRICE, *Clerk,*
By CARL J. SEYMOUR,
Deputy Clerk.

Supreme Court, Erie County.

THE PEOPLE OF THE STATE OF NEW YORK
against
ARTHUR E. APPLEYARD.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

Edward E. Coatsworth, being duly sworn, deposes and says: That he is the District Attorney of Erie County, State of New York, and has entrusted the felony warrant for the arrest of one Arthur E. Appleyard with James Holmes, a detective-sergeant of police of the city of Buffalo; that deponent swears on information and belief that the defendant is now in the city of Boston, State of Massa-
41 chusetts. That deponent bases such information on a conversation had with Franklin D. Locke, attorney and counsellor at law of the city of Buffalo, New York, local counsel for said defendant Arthur E. Appleyard, who stated to deponent that the said Arthur E. Appleyard was in the said city of Boston, Massachusetts.

EDWARD E. COATSWORTH.

Sworn to before me this 4th day of February, 1905.

WM. J. CURTIN,
Commissioner of Deeds in and for Buffalo, N. Y.

Affidavit of Commissioner.

STATE OF NEW YORK,
Erie County Clerk's Office, ss:

I, John H. Price, Clerk of said County and of the Courts thereof, the same being Courts of Record, do hereby certify that William J. Curtin before whom the annexed affidavit was taken and whose name is subscribed in the certificate of proof thereof, [SEAL.] was at the time of taking the same, a Commissioner of Deeds, for the City of Buffalo, in said County, duly sworn and acting as such and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe the signature thereto to be his genuine signature.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said County, at Buffalo, this 4th day of February, A. D. 1905.

JOHN H. PRICE, *Clerk,*
By CARL J. SEYMOUR,
Deputy Clerk.

42 Supreme Court, Erie County.

THE PEOPLE OF THE STATE OF NEW YORK
against
ARTHUR E. APPLEYARD.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

Albert J. Wheeler, being duly sworn, deposes and says: That he resides in the city of Buffalo and his occupation or profession is that of a banker; that on or about the 21st day of December, 1904, he was duly appointed by the Supreme Court of the State of New York as receiver for the German Bank of Buffalo, New York, then in dissolution;

That he is the principal complaining witness in the above entitled action and that the application for a requisition of the defendant Arthur E. Appleyard is made in good faith and for the sole purpose of punishing the defendant and that it is not intended or desired to use the prosecution or to obtain the requisition for the purpose of collecting a debt or for any private purpose, and that if the requisition is issued it shall not be used directly or indirectly for any such purpose.

ALBERT J. WHEELER.

Subscribed and sworn to before me this 4th day of February, 1905.

CHARLES A. HAHL,
Commissioner of Deeds, Buffalo, N. Y.

43 *Affidavit of Commissioner.*

STATE OF NEW YORK,
Erie County, Clerk's Office, ss:

I, John H. Price, Clerk of said County and of the Courts thereof, the same being Courts of Record, do hereby certify that Charles A. Hahl before whom the annexed affidavit was taken and whose name is subscribed in the certificate of proof thereof, [SEAL.] was at the time of taking the same, a Commissioner of Deeds, for the City of Buffalo, in said County, duly sworn and acting as such and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe the signature thereto to be his genuine signature.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said County, at Buffalo, this 4th day of February, A. D. 1905.

JOHN H. PRICE, *Clerk,*
By CARL J. SEYMOUR,
Deputy Clerk.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

James T. Twitty being duly sworn deposes and says that he is a resident of the city of Buffalo and a citizen of the State of New York and engaged in conducting a riding academy at 26 and 28 East North Street in the city of Buffalo, and has been so engaged for a period of five years; that deponent is personally acquainted with the defendant Arthur E. Appleyard and became acquainted with him during the month of May, 1904, when the said defendant upon several occasions hired and rented of this deponent saddle horses for his use and benefit, and that deponent has examined his books and records and finds from said books and records that the said
44 Arthur E. Appleyard, the defendant herein, did on the 18th day of May, 1904, rent and hire from this deponent a saddle horse and said horse was used for about a period of one hour on said day, for which said Arthur E. Appleyard did pay, all within the city of Buffalo, State of New York.

JAMES T. TWITTY.

Subscribed and sworn to before me this 3rd day of February, 1905.

WM. J. CURTIN,
Commissioner of Deeds in and for the City of Buffalo, N. Y.

Affidavit of Commissioner.

STATE OF NEW YORK,
Erie County, Clerk's Office, ss:

I, John H. Price, Clerk of said County and of the Courts thereof, the same being Courts of Record, do hereby certify that William J. Curtin before whom the annexed affidavit was taken, and whose name is subscribed in the certificate of proof thereof, [SEAL.] was at the time of taking the same, a Commissioner of Deeds, for the City of Buffalo, in said County, duly sworn and acting as such and authorized to take the same; and further, that I am well acquainted with his handwriting, and verily believe the signature thereto to be his genuine signature.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said County, at Buffalo, this 4th day of February, A. D. 1905.

JOHN H. PRICE, *Clerk,*
By CARL J. SEYMOUR,
Deputy Clerk.

45 STATE OF NEW YORK,
District Attorney's Office of Erie County, ss:

I, Edward E. Coatsworth, District Attorney of Erie County, hereby certify that the felony warrant for the arrest of Arthur E. Appleyard, hereto attached, issued after indictment on the 31st day of January, 1905, is a true and correct copy of the original warrant issued herein bearing date the 31st day of January, 1905.

In testimony whereof I have hereunto set my hand and affixed the seal of said office at Buffalo, N. Y., this 31st day of January, 1905.

[SEAL.] EDWARD E. COATSWORTH,
District Attorney of Erie County.

Felony Warrant, District Attorney, Sec. 301, *Crim. Code.*

COUNTY OF ERIE:

In the Name of the People of the State of New York to any Peace Officer in this State:

An indictment having been found on the 31st day of January, 1905, in the Supreme Court, Erie County, Charging Arthur E. Appleyard with the crime of Grand Larceny, First Degree.

You are therefore commanded forthwith to arrest the above named Arthur E. Appleyard and bring him before the Supreme Court, Erie County, to answer the indictment; or, if the Court have adjourned for the Term, that you deliver him into the custody of the Sheriff of the County of Erie.

City of Buffalo, the 31st day of January, 1905.

EDWARD E. COATSWORTH,
District Attorney of the County of Erie.

46 *Officer's Return on Felony Warrant.*

The undersigned, a peace officer in the State of New York, to wit: a Detective Sargeant of Buffalo City Police hereby certifies that pursuant to the within warrant he made diligent search within said State for the person named in the warrant, Arthur E. Appleyard and did not arrest him in the County of Erie or State of New York, or deliver him to the Sheriff of Erie County for the reason the said Arthur E. Appleyard is not within the State of New York, third day of February, 1905.

JAMES HOLMES,
Detective-Sargeant.

The Felony Warrant is endorsed as follows: Supreme Court, Erie County. The People of the State of New York, Plaintiffs, against Arthur E. Appleyard, Defendant. Felony Warrant. Sec. 301 Crim. Code. No. 1556. Edward E. Coatsworth, District Attorney Erie County, 16-17 City and County Hall, Buffalo, N. Y.

47 Supreme Court, Erie County.

THE PEOPLE OF THE STATE OF NEW YORK
against
ARTHUR E. APPLEYARD.

Indictment.

The Grand Jury of the County of Erie, by this indictment accuse Arthur E. Appleyard of the crime of Grand Larceny in the First Degree, committed as follows, to wit:—

The said Arthur E. Appleyard, on the eighteenth day of May, in the year of our Lord one thousand nine hundred and four, at the city of Buffalo, in the County of Erie, with force and arms with intent to deprive and defraud The German Bank, a body corporate, duly organized and existing under and by virtue of the laws of the State of New York, having a place for the transaction of a general banking business in the city of Buffalo, New York, of the proper moneys, goods, chattels and personal property hereinafter mentioned, and of the use and benefit thereof, and to appropriate the same to his own use, did then and there to the said The German Bank, said body corporate, and to one Richard Emory, president of said The German Bank, said body corporate, who by virtue of his office as such president and the by laws of said bank had full and complete authority to pass upon and make all loans and discounts of the moneys and property of said bank, present for discount his certain prom-
48 issory note, bearing date the fourteenth day of May, one thousand nine hundred and four, for the sum of fifty thousand dollars, payable in ninety days from the date thereof to the order of the said The German Bank, said body corporate, and signed by the said Arthur E. Appleyard, a more particular description of

which said note being to the Grand Jury aforesaid unknown, and, therefore, cannot now be given, and the said Arthur E. Appleyard did then and there, at the time of the presentation of said note for discount to said Richard Emory, president of said The German Bank, said body corporate, and to the said The German Bank, said body corporate, offer, tender and deliver to said Richard Emory, president of the said The German Bank, said body corporate, and to said The German Bank, said body corporate, seventy temporary first and consolidated mortgage five per cent. gold bonds, of the Ohio Union Traction Company, a body corporate, duly organized and existing under and by virtue of the laws of the State of Ohio, and of the par value of one thousand dollars each bond, a copy of one of which said bonds is hereto attached and hereby made a part of this count of this indictment, as collateral security to said note so delivered to said Richard Emory, and did then and there feloniously, fraudulently and falsely pretend and represent to said Richard and to the said The German Bank, said body corporate, Emory, president of the said The German Bank, said body corporate, that the said Ohio Union Traction Company, said body corporate, did then and there hold, own and control the following railroad corporations, organized and existing under and by virtue of the laws of the State of Ohio, to wit: The Columbus, London & Springfield Railway, an electric interurban street railway; the Dayton, Springfield & Urbana Electric Railway; the Central Market Rail-
49 way; the Columbus, Grove City & Southwestern Railway; the Kenton & Southern Railway; the Ohio River & Western Railway, and The Dayton, Lebanon & Cincinnati Railway, and all the properties, rights, privileges and franchises theretofore owned by each of the said railways above mentioned, and did then and there further feloniously, fraudlently and falsely pretend and represent to said Richard Emory, president of said The German Bank, said body corporate, and to said The German Bank, said body corporate, that said properties so owned and controlled by the said The Ohio Union Traction Company, said body corporate, had been conveyed to the Security Trust Company, of Camden, New Jersey, and did further feloniously, fraudulently and falsely pretend and represent to the said Richard Emory, president of the said The German Bank, said body corporate, and to said The German Bank, said body corporate, that the said bonds of said Ohio Union Traction Company, so offered and delivered to said Richard Emory, as president of said The German Bank, said body corporate, and to said The German Bank, said body corporate, as aforesaid, were then and there of greater market value than the sum of forty nine thousand two hundred and fifty dollars; and that said bonds were then and there valuable and full security for the payment of said note and any moneys and property loaned thereon; and that said bonds were then and there worth seventy-five, meaning that each and every of said bonds was then and there worth the sum of seven hundred and fifty dollars in money, and that said bonds were then and there absolutely good, and the said Richard Emory, president of the said The German Bank, said body corporate, then and there believing the said

false pretences and representations so made as aforesaid, by
50 the said Arthur E. Appleyard, and being deceived thereby, was induced by reason of the false pretences and representations so made as aforesaid to deliver and did then and there deliver to the said Arthur E. Appleyard of the proper moneys, goods, chattels and personal property of the said The German Bank, said body corporate, forty nine thousand two hundred and fifty dollars in money, of a kind, number and denomination to the Grand Jury aforesaid unknown and a more particular description whereof cannot therefore, now be given, of the value of forty nine thousand two hundred and fifty dollars, and the said Arthur E. Appleyard did then and there feloniously receive and obtain of the said The German Bank, said body corporate, the said sum of forty nine thousand two hundred and fifty dollars of the said proper moneys, and valuable things, goods, chattels and personal property, and effects of the said The German Bank, said body corporate, by means of the false pretences and representations aforesaid, and with intent feloniously to deprive and defraud the said The German Bank, said body corporate, of its property and of the use and benefit thereof, and to appropriate the same to his own use, and the said Arthur E. Appleyard did then and there feloniously appropriate to his own use the said forty nine thousand two hundred and fifty dollars of the proper moneys, valuable things, goods, chattels and personal property and effects of the said The German Bank, said body corporate, with intent feloniously to deprive and defraud the said The German Bank, said body corporate of its property and of the use and benefit thereof.

Whereas in truth and in fact, the said Ohio Union Traction Company, did not then and there hold, own and control the prop-
51 erty of said The Columbus, London & Springfield Railway, an electric interurban street railway; the Dayton, Springfield & Urbana Electric Railway; the Central Market Railway; the Columbus, Grove City & Southern Railway; The Kenton & Southern Railway; The Ohio River & Western Railway, and The Dayton, Lebanon & Cincinnati Railway, and the rights, privileges and franchises owned by each of said railways above mentioned, and that said Ohio Union Traction Company did not then and there own any property whatsoever, and that said Ohio Union Traction Company had not or did not at any time convey to the Security Trust Company of Camden, New Jersey, any property whatever and that said bonds of said Ohio Union Traction Company so offered and delivered to said Richard Emory, as president of said The German Bank, said body corporate, and to the said The German Bank, said body corporate, as aforesaid, were not then and there of greater market value than the sum of forty nine thousand two hundred and fifty dollars; and that said bonds were not then and there valuable and full security for the payment of said note and any moneys and property loaned thereon; and that said bonds were not issued upon any property whatsoever, and that said bonds were not then and there worth seventy five, and each and every of said bonds was not then and there worth the sum of seven hundred and fifty dollars in money, and that said bonds were not then and there absolutely good;

And whereas in truth and in fact the pretences and representations so made as aforesaid by the said Arthur E. Appleyard to the said Richard Emory, president of the said The German Bank, said body corporate, and to the said The German Bank, said body cor-
52 porate, aforesaid, was and were then and there in all respects utterly false and untrue, as the said Arthur E. Appleyard, at the time of making the same then and there well knew, and that by reason of said false pretences so made as aforesaid in the manner and form aforesaid and by the means aforesaid, with force and arms, the aforesaid proper moneys, goods, chattels and personal property of The German Bank, said body corporate, aforesaid, the said Arthur E. Appleyard then and there feloniously did steal, contrary to the form of the Statute in such case made and provided, and against the peace of The People of the State of New York, and their dignity.

Second Count. And the Grand Jury of the County of Erie aforesaid, by this indictment do further accuse the said Arthur E. Appleyard of the crime of Grand Larceny in the First Degree, committed as follows:

That the said Arthur E. Appleyard at the City of Buffalo, in the County of Erie, on the eighteenth day of May, in the year of our Lord one thousand nine hundred and four, then and there with intent to deprive and defraud the true owner of its property and of the use and benefit thereof, and to appropriate the same to his own use, with force and arms, forty nine thousand two hundred and fifty dollars in money of a kind, number and denomination to the Grand Jury aforesaid unknown, and a more particular description whereof cannot, therefore, now be given, of the value of forty nine thousand two hundred and fifty dollars, of the goods, chattels and personal property of The German Bank, a body corporate, duly organized and existing under and by virtue of the laws of the State of New
53 York, conducting a general banking business in the city of Buffalo, New York, then and there being found, then and there feloniously did steal, take and carry away, contrary to the form of the Statute in such case made and provided, and against the peace of The People of the State of New York, and their dignity.

(Signed) EDWARD E. COATSWORTH,
District Attorney for Erie County.

STATE OF OHIO.

No. 651. $1,000.

The Ohio Union Traction Company.

Temporary First and Consolidated Mortgage Five Per Cent. Gold Bonds.

For value received, The Ohio Union Traction Company, a corporation of Ohio, promises to pay to the bearer, or if this temporary bond shall be registered to the holder hereof, registered according to the provisions indorsed hereon, the sum of $1,000 (one thousand dollars) on the 1st day of March, A. D. 1944, at the office of the

Security Trust Company in the City of Camden, N. J., with interest thereon in the meantime at the rate of 5 per centum per annum payable semi-annually on the 1st days of September and March in each year on the presentation of this temporary bond at the said office of the Security Trust Company in the city of Camden, and proper indorsement of such payment hereon, or if this temporary bond shall be registered then to the order of the registered holder hereof. Both the principal and interest of this temporary
54 bond are payable in gold coin of the United States of America of or equivalent to the present standard of weight and fineness without deduction for any tax or taxes which, by any present or future law or ordinance of the United States or Canada or of any State, province, county or municipality therein, the promisor may be compelled to pay or to retain therefrom.

This bond is one of a series of temporary bonds all of similar tenor and date but of different denominations, all of which are equally secured both as to principal and interest by an indenture of mortgage of even date herewith, whereby the railways and other property of The Ohio Union Traction Company now owned or hereafter acquired have been conveyed to the Security Trust Company as trustee for the holders of said temporary bonds. For a statement of the property conveyed, the nature and extent of the security, the right of the holders of the bonds in and to said security reference is hereby made to the indenture of mortgage above mentioned.

The indenture of mortgage above mentioned contains the following limitations with regard to the issue of bonds of this series:

(*a*) 700 bonds amounting in the aggregate to $700,000 at par may be issued forthwith in respect of the property and franchises owned by the promisor at the date of said indenture of mortgage.

(*b*) Additional bonds may be issued from time to time for additions and extensions, including equipment, to the lines of railroad of the promisor at a rate not exceeding $30,000 per mile of single track and $10,000 per mile of double track, of main line, exclusive of turnouts and sidings, outside of the inhabited portions of cities, and $60,000 per mile of single track and
55 $40,000 additional per mile of double track of main line, exclusive of turnouts and sidings, within the inhabited portions of cities, provided that where said lines are situated within the inhabited portions of cities upon streets which are unpaved the said limitation shall be reduced by $5,000 per mile.

(*c*) Additional bonds may be issued to acquire securities constituting a first lien upon the property of any other railroad or street railway corporation, provided that at least 85 per cent. of the entire authorized issue of such securities shall be acquired and bonds of this series reserved to acquire or discharge those securities remaining outstanding, and provided further that such corporation is leased to the promisor or the promisor owns at least a majority of the capital stock of such corporation, and said stock is subjected to the lien of the above mentioned indenture, but the aggregate par value of the bonds of this series which may be issued in respect of such securities shall

not exceed for each mile of main line of such other corporation, the limitation per mile hereinbefore mentioned.

The promisor reserves the right to pay this temporary bond on any interest payment day before maturity upon giving notice in accordance with the provisions endorsed hereon. In case of such payment before maturity the promisor shall pay in addition to the principal hereof and accrued interest thereon, a premium of 10 per centum of such principal.

No holder of this temporary bond shall be entitled to the benefit of any of the provisions of said indenture of mortgage unless the said trustee shall have certified that this bond is one of the series of bonds specified in said indenture of mortgage.

56 The principal of this temporary bond may be declared due at any time in the discretion of the trustee or at the election of the holders of a majority of the temporary bonds at the time outstanding, in the event of default for three months in the payment of interest hereon, or on any of said temporary bonds or in the event of foreclosure, sale or the loss or forfeiture of franchises or certain other contingencies as specified in said indenture of mortgage.

These temporary bonds are issued in lieu of and pending the engraving of a like amount of the permanent bonds to be ultimately issued under the said indenture and are exchangeable for such permanent bonds. For the nature and extent of the security and the terms and conditions upon which this temporary bond is secured, reference is hereby made to such indenture.

No recourse shall be had for the payment of the principal or interest of this temporary bond against any incorporator, stockholder, officer, or director of the promisor either directly or through the promisor by virtue of any statute or by enforcement of any assessment or otherwise and any and all personal liability of the incorporators, stockholders, officers and directors of the promisor in respect hereof or in respect of any of the said series of temporary bonds is hereby and by the acceptance of this bond expressly waived and released by every holder hereof.

In witness whereof The Ohio Union Traction Company has caused these presents to be executed on its behalf by its president or vice-president, and its common seal to be hereto affixed and attested by its secretary and assistant secretary, both thereunto

57 duly authorized, the 1st day of March, A. D. 1904.

THE OHIO UNION TRACTION COMPANY,
By ARTHUR E. APPLEYARD, *President.*

Attest:

[SEAL.] CHARLES F. COANEY, *Secretary.*

(On Back.)

Provisions for Registration.—This temporary bond may be registered in the holder's name on the books of the Ohio Union Traction Company at the office of the Security Trust Company in the City of Camden, N. J., and such registration shall be noted on the bond

after which no transfers hereof shall be effectual unless it shall be made in writing signed by the registered owner or his legal representative or duly authorized agent and entered in the said books and noted hereon, but the same may be discharged from registry by being so transferred to bearer, after which it shall be transferable by delivery but may be again and from time to time registered as before. The Ohio Union Traction Company, or the trustee of the indenture within mentioned shall not be bound to take notice of or in any way to see the execution of any trust expressed, implied or constructed affecting the title to or issue of this temporary bond or of the principal or interest therein specified or be affected by notice of any equity that may be subsisting in respect thereof.

Provisions for Notice of Prior Payment.—In order to call
58 this temporary bond for payment before maturity as provided in the within mentioned indenture of mortgage the promisor shall sixty days prior to the day fixed for such payment give notice in writing to the trustee within mentioned if its intention so to do and shall mail postpaid a written notice of such intention and of the time and place fixed for making such payment to the registered holder hereof, if this temporary bond shall be registered at his last known address appearing upon the registry books of the promisor, and shall publish a copy of such notice twice a week for six successive weeks in a newspaper of general circulation in each of the cities of Boston, Massachusetts, Philadelphia, Pennsylvania, Columbus Ohio, and Montreal, Canada, and thereupon this temporary bond shall become forthwith due and payable and after the day so fixed for payment the promisor shall have the right to cease payment of interest hereon, unless payment shall be refused by the promisor upon presentation of this temporary bond for payment by the holder thereof according to such notice.

Trustee's Certificate.—This is to certify that this temporary bond is one of the series of temporary bonds specified in the indenture of mortgage referred to within.

SECURITY TRUST COMPANY, *Trustee,*
By C. H. POLHEMUS, *Secretary.*

(Endorsed:) No. 651. The Ohio Union Traction Company. Temporary First and Consolidated Mortgage Five Per Cent. Gold Bond. $1,000. Dated 1st March, 1904, Payable 1st March, 1944. Principal and Interest payable at the Security Trust Company, Camden, N. J.

59 STATE OF NEW YORK,
Clerk's Office, Erie County, ss:

I, John H. Price, Clerk of said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify that I have compared the annexed
[SEAL.] copy Indictment with the original thereof, entered and on file in this office, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County, at Buffalo, this 4th day of Feb'y, 1905.

JOHN H. PRICE, *Clerk,*
By CARL J. SEYMOUR,
Deputy Clerk.

The foregoing Indictment is endorsed as follows: Supreme Court, Erie County. January Term, 1905. The People against Arthur E. Appleyard. Indictment: Grand Larceny First Degree. Edward E. Coatsworth, District Attorney. A true bill. Charles Mosier, Foreman. Filed Jan. 31, 1905. Fred Becker, Clerk. Names of Witness- before Grand Jury: Richard Emory, Charles F. Coaney, Paul Werner, Richard R. Fogelsonger.

60 DISTRICT ATTORNEY'S OFFICE, COUNTY OF ERIE,
BUFFALO, *Feb. 3rd,* 1905.

To His Excellency the Governor.

SIR: In compliance with your regulations, I have the honor herewith to make application for a requisition upon the Governor of the State of Massachusetts for Arthur E. Appleyard, who stands indicted in this County for the crime of Grand Larceny in the First Degree, and who, as appears from the annexed affidavits of Richard Emory, Charles F. Coaney, James L. Twitty and Edward E. Coatsworth, James Holmes, Albert J. Wheeler, who are responsible persons and entitled to credit, is a fugitive from the justice of the State.

In support of the application, I enclose herewith, in duplicate, certified copies of the indictment against the said Arthur E. Appleyard and original affidavits in duplicate alleging the facts required to be established, and respectfully certify;

A. That the full name of the person for whom extradition is asked is Arthur E. Appleyard, and the name of the Agent whom I hereby designate as such is James Holmes.

B. That in my opinion the ends of public justice require that the said Arthur E. Appleyard be brought to this State for trial, at the public expense, and that I am willing that such expense be a county charge.

C. That I have, as I believe, within my reach, and will be able to produce on the trial, sufficient evidence to insure conviction.

61 *D.* That the person named above as Agent is a Detective Sargeant of the Buffalo City Police and is a proper person to be so designated, and I certify that he has no private interest in the arrest of the fugitive.

E. No other application has been made, nor has any requisiton been issued for this person, growing out of the transaction set out in the present indictment.

F. I believe that the criminal named is not now under arrest in the State of Massachusetts awaiting requisition but a felony warrant has been duly issued for the arrest of this defendant, that said defendant is not within the State of New York as appears by copy of felony warrant hereto attached.

G. That this application is not made for the purpose of enforcing

the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

I am informed and believe that the said Arthur E. Appleyard was at the time he fled therefrom a transient resident of this State.

H. That all the papers in duplicate herein have been compared with each other, and are, in all respects, exact counterparts.

I. That the defendant is charged with the commission of a felony,—

Under SECTION 528. *Larceny Defined.*—A person who, with intent to deprive or defraud the true owner of his property or of the use and benefit thereof, or to appropriate the same to the use of the
62 taker, or any other person, either,

1. Takes from the possession of the true owner or of any other person; or obtains from such possession by color or aid of fraudulent or false representations or pretence, or of any false token or writing; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; * * * steals such property and is guilty of larceny.

SECTION 530. *Grand Larceny in First Degree.*—A person is guilty of Grand Larceny in the first degree, who steals, or unlawfully obtains or appropriates, in any manner specified in this chapter, * * *

3. Property of the value of more than five hundred dollars, in any manner whatever.

And that the said defendant did unlawfully obtain and appropriate the said property so charged to have been stolen as aforesaid to his own use.

SECTION 533. *Grand Larceny in the First Degree, How punished.*—Grand Larceny in the first degree is punishable by imprisonment for a term not exceeding ten years.

J. That not more than one year has elapsed since the commission of the offence charged in the indictment.

That a warrant has been issued for the arrest of the said
63 Arthur E. Appleyard and duplicate certified copies of the same, together with the returns thereto, are attached to this application.

I am, sir,

Very respectfully yours,

EDWARD E. COATSWORTH,
District Attorney, Erie County.

64 On the same day the following Offer of Proof and Requests for Rulings and Findings is filed:

Petitioner's Offer of Proof, Requests for Rulings and Requests for Findings of Fact.

Offer of Proof.

1. Offers to introduce the testimony of Appleyard, Jenks, Sage, Van Vorst, Reed, Locke, McCormick, Sweet, Carter, Kingsbury, Twitty, Walker and Mrs. Appleyard, constituting all the evidence submitted by the petitioner to His Excellency, the Governor, for the purpose of showing that the *the* warrant for extradition ought not to have issued and that Mr. Appleyard is not a fugitive from justice within the meaning of Section 2, Article 4 of the Constitution of the United States, and of Section 5278 of the Revised Statutes of the United States.

2. Offers to introduce the testimony of Mr. Appleyard and Mr. Jenks regarding what the defendant claims to have been the actual transaction connected with the obtaining of $50,000 from the Germant Bank of Buffalo, on which the indictment in New York was based, for the purpose of showing

(*a*) That what was done did not constitute a crime under the laws of the State of New York.

(*b*) That no crime was committed in the State of New York.

(*c*) That Mr. Appleyard had no knowledge of having done anything which was a crime under the laws of the State of New York.

(*d*) That under all the circumstances there was no conscious fleeing from justice on his part.

65 3. Offers to introduce the testimony of Appleyard, Jenks, Stage, Van Vorst, Reed, Locke and Mrs. Appleyard regarding the presence of Mr. Appleyard in the State of New York between May 18th, 1904 and December 5th, 1904, his manner of travelling about, registering at hotels, general conduct, etc., for the purpose of showing that he was not a fugitive from justice, and that there was no conscious flight from justice by him.

4. Offers to introduce the testimony of Appleyard, Jenks, Kingsbury, Twitty and Walker, for the purpose,

(*a*) Of contradicting the testimony of Emory, Coaney and Twitty presented in connection with the application for the warrant for extradition,

(*b*) Of showing that Mr. Appleyard was not in the State of New York on May 18th, 1904,

(*c*) Of showing that he left New York with the consent of the person alleged to have been defrauded.

Requests for Rulings.

1. On all the evidence it does not appear that Mr. Appleyard is a fugitive from justice within the meaning of Section 2, Article 4, of the Constitution of the United States, and of Section 5278 of the Revised Statutes of the United States, and he should therefore be discharged from custody.

2. Unless it appears positively by a preponderance of the evidence that Mr. Appleyard consciously fled from justice when he left the State of New York, he should be discharged from custody.

3. In this proceeding the finding by the Governor as a fact that Mr. Appleyard is a fugitive from justice is not conclusive.

66 Requests for Findings of Fact.

1. That the acts of Mr. Appleyard in connection with obtaining $50,000 from the German Bank of Buffalo on which the indictment was based, do not constitute a crime under the laws of the State of New York.

2. That no crime was committed by Mr. Appleyard in the State of New York.

3. That Mr. Appleyard was not in the State of New York on May 18th, 1904, the date of the alleged crime.

67 EXHIBIT 1.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

In the Matter of the Application to the Governor of Massachusetts to Deliver ARTHUR E. APPLEYARD upon Requisition from the Governor of New York.

Affidavit of Arthur E. Appleyard.

I, Arthur E. Appleyard, on oath depose and say that I am thirty seven (37) years of age, was born in Lincoln, England, came to this country in 1884, am a citizen of the United States, and a resident of Millis, in this Commonwealth.

For the past ten (10) years my business has been that of a broker, with an office at 50 State Street, in Boston, Massachusetts, and for the past two (2) years I have also had offices in Philadelphia, Pennsylvania, and Cincinnati, Ohio. During the past ten (10) years I have also been engaged in the construction and operation of gas and electric plants, and in the construction and operation of street railways, having constructed for Massachusetts parties the Columbus, Buckeye Lake and Newark, and the Columbus, Newark and Zanesville Street Railways, in Ohio.

I constructed the Dayton, Springfield & Urbana Electric Railway, Springfield & Western Electric Railway, Urbana Bellefontaine & Northern Railway; Columbus, London & Springfield Railway; Columbus, Grove City & Southwestern Railway; and the Central Market Street Railway, all in the State of Ohio, constituting a system of electric railways one hundred and eighty (180) miles in length,
68 entering on their own tracks and connecting the cities of Dayton, Springfield and Columbus, and I owned the controlling interest in the stock of said railways.

I also acquired by purchase a controlling interest in two steam

roads in Ohio, the Dayton, Lebanon & Cincinnati Railroad, thirty five (35) miles in length, and the Ohio River & Western Railway, one hundred and twelve (112) miles in length. All these were acquired prior to the purchase of the German Bank hereinafter referred to.

One feature of my brokerage business has been the purchase and sale of stocks in national and state banks and trust companies. On or about the thirtieth (30th) day of April, A. D. 1904, I purchased fifty one (51) shares of the total issue of one hundred (100) shares of the stock of the German Bank of Buffalo, New York, paying therefor the sum of three hundred eighty two thousand five hundred ($382,500) dollars in cash, with a view to ultimately purchasing the controlling interest in two other state banks and one national bank in said city of Buffalo, and then forming a trust company with a capital of one million ($1,000,000) dollars, and a surplus of one million ($1,000,000) dollars. Thereupon the only change made in the board of officers of said bank was the resignation of Eugene A. Georger as President, and the election of Richard Emory as President. Mr. Emory was also elected a director to fill a vacancy then existing caused by the decease of a former director. Said Eugene A. Georger continued to act as a director. He was also retained in the employ of the bank for the purpose of familiarizing the new president with his work.

Either on the seventh or ninth day of May, A. D. 1904, I
69 had a talk with Richard Emory, President of the German Bank, over the long distance telephone, I being in my office at Boston, and he being in the Iroquois Hotel in Buffalo. I told him I wanted a loan of fifty thousand ($50,000) dollars. He asked me what security I proposed to give for the loan, and I said I would send him up some bonds. He asked what the bonds were, and I told him Ohio Union Tractions. He said in substance that he would rather have me send some Chippewa Valleys or Dayton, Lebanon & Cincinnatis. I said I did not have either Chippewa Valleys or Dayton, Lebanon & Cincinnatis that day, but would send up Ohio Union Tractions as temporary collateral, and would exchange other bonds for them at an early date. He said, "That would be satisfactory. Of course I am depending on your name more than on the collateral. I know you have always paid every note you ever gave, and while I do not want to loan on anything but collateral, yet if you will exchange them later, it will be all right; but do not draw against the loan any sooner than you are obliged to, as we have just lost a very large deposit," and as I now remember, that of the State Treasurer. I then signed a note in my office and left it in blank in charge of the Cashier, who later on during the week filled out the note and the same was sent to Buffalo on May 13th, 1904. A copy of said note, dated May 14th, 1904, is hereto annexed marked "Exhibit A." Interest on said note at the rate of six per cent., to wit: Seven hundred and fifty ($750) dollars, was paid by me to said German Bank, in advance, and computed from May 14th, 1904.

I was in my office in Boston on said May 14th, 1904, and relying

upon the credit thus given as above set forth, I then drew a
70 check (in favor of the Camden National Bank, Camden, New Jersey, for the amount of thirty two thousand ($32,000) dollars, on said German Bank against my account in said bank, made up of prior deposits and increased by this credit of fifty thousand ($50,000) dollars. On the 17th day of May, A. D. 1904, said loan was credited on my check-book on the German Bank, by Herbert M. Jenks, my representative in Buffalo, who in the meantime had delivered the note and collateral to the bank, and my Boston office was advised by letter sent May 17th, 1904, by said Jenks, that the proceeds of the note had been placed to my credit.

On said 17th day of May, 1904, another check was drawn against said deposit to the order of said German Bank, for the sum of twenty thousand ($20,000) dollars, for the purpose of paying a draft made in my office in Boston on the 13th day of May, 1904, to the order of the First National Bank of Boston, on said German Bank. Said note for fifty thousand ($50,000) dollars, dated May 14th, 1904, was paid on the eleventh day of August, A. D. 1904, and a new note for fifty thousand ($50,000) dollars dated August 12th, 1904, was given, a copy of which is hereto annexed marked "Exhibit B." After said 14th day of May, A. D. 1904, said Emory, with my assent, retained certain collateral (which accumulated at said bank) for the purpose of applying the same on account of my loan, and subsequent to said August 12th, 1904, I received from the bank in the handwriting of C. F. Coaney, Assistant to the President, and Paul Werner, the Cashier, a statement setting forth the application of the collateral on account of said note for fifty thousand ($50,000) dollars, dated August 12th, 1904, a copy of which statement is hereto annexed, marked "Exhibit C," from which it appeared that the col-
71 lateral then held as security for the payment of said note for fifty thousand ($50,000) dollars was as follows:

Thirty (30) bonds of the Ohio Union Traction Company, of the par value of one thousand ($1000) dollars each, eleven (11) bonds of the Dayton, Lebanon & Cincinnati Railroad Company, of the par value of one thousand ($1000) dollars each, seven (7) bonds of the Kenton & Southern Railway of the par value of one thousand ($1000) dollars each, and twenty seven (27) bonds of the Chippewa Valley Electric Railroad Company, of the par value of one thousand ($1000) dollars each.

On September 17th, 1904, in compliance with the request of said Emory that other security should be sent to replace said Ohio Union Traction Company bonds, I sent to him as President of said Bank, forty four (44) bonds of the Dayton, Lebanon & Cincinnati Railroad Company, of the par value of one thousand ($1000) dollars each, and six (6) bonds of the Kenton & Southern Railway Company, of the par value of one thousand ($1000) dollars each. A copy of my said letter dated September 17th, 1904, is hereto annexed marked "Exhibit D." Copy of letter of C. F. Coaney, Assistant to the President, dated September 19th, 1904, acknowledging the receipt of the same, is hereto annexed, marked "Exhibit E."

Said note for $50,000, dated August 12th, 1904, was paid on the

tenth (10th) of November, 1904, and a new note given dated November 10th, 1904, which said note is now in the hands of the receiver of said German Bank. Through the oversight of a
72 clerk, the collateral designated in the note, dated November 10th, 1904, was written as seventy Ohio Union Traction Company fives, evidently copied from the form used on prior notes, and he did not write in the collateral in accordance with said notice of the German Bank heretofore referred to as Exhibit C. This note was signed by me in blank, and was filled in and forwarded to said German Bank by H. W. Easton, Cashier in my Boston office, on November 8th, 1904, with a letter, a copy of which is hereto annexed, marked "Exhibit F."

At the time the arrangement was made for said original loan of $50,000, (May 7th or May 9th, 1904) I made no statements or representations whatsoever to said Emory as to the value of the seventy Ohio Union Traction Company bonds which were subsequently deposited as collateral security for said note. I knew that said Emory was at this time one of the incorporators and directors of said Ohio Union Traction Company, was also its Vice-President and General Manager, and was possessed of whatever information anyone had regarding said bonds.

I have never attended a meeting of the stockholders or of the directors of said Ohio Union Traction Company. I made no statements on May 7th or May 9th, or on May 18th, 1904, the date of the offense alleged in the indictment, as to what said company owned or controlled, nor did I make any representations to said Emory that any property had been conveyed by said Ohio Union Traction Company to the Security Trust Company of Camden, New Jersey, as collateral security to the issue of its bonds. I did not say that said seventy bonds were good and sufficient security for said loan
73 of $50,000. I did not make any misrepresentations of any facts regarding or in connection with said bonds. I was then solvent and believed I had a large surplus.

Since said 18th day of May, A. D. 1904, my business had required my frequent presence in the State of New York, and I have been in said State of New York since said May 18th, A. D. 1904, the date of the alleged offense referred to in the requisition papers in this case. Since said May 18th, 1904, I have been in the city of Buffalo, in the State of New York, in connection with my business, at various dates, namely: May 20th, 21st, 23d, 26th, 27th, 31st, June 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 13th, 14th, 20th, 21st, 22d, 23d, 24th, July 5th, 6th, 7th, 8th, 19th, December 4th, 5th, 1904.

Since said May 18th, 1904, I have been in the city of New York, in the State of New York, in connection with my business, at various dates, namely: August 16th, 17th, September 12th, October 7th, 11th, 12th, 19th, 27th, 29th, November 10th, 17th, 18th, 22d, 26th, 27th, 29th, 30th and December 2d, 1904.

Since said May 18th, 1904, I have been in the City of Albany, in the State of New York, in connection with my business, namely: on the third day of November, A. D. 1904, and at that time called at the office of the Superintendent of Banks of the State of New York.

Since said May 18th 1904, I have been in the city of Philadelphia, Pennsylvania, in connection with my business, at various times, namely: July 26th, 27th, October 12th, 13th, 14th, November 14th, 15th, 16th, 17th, 25th, 26th, 28th, 1904.

74 Since said May 18th, 1904, I have been in the city of Washington, D. C., in connection with my business, at various times, namely: August 8th, 9th, 10th, 29th, September 6th, 7th, 22d, 23d, 24th, 28th, 29th, 30th, October 1st, 3d, 4th, 5th, 6th, 17th, 18th, 25th, 26th, November 2, 1904.

Since said May 18th, 1904, I have been in the city of Baltimore, Maryland, in connection with my business, namely; on September 21st, 1904.

In going to and from said cities I have travelled openly and publicly, always registering when I stopped at hotels, in my own name. In two instances when I stopped at the Park Avenue Hotel, in the city of New York, I was accompanied by my wife. I mention my presence in the cities of Philadelphia, Washington and Baltimore, because in going to and from said cities, with the exception of two trips each way, I passed through the State of New York. The rest of the time since May 18th, 1904, not accounted for as above, I have been in Boston and vicinity, attending to my business in the ordinary course, and living with my family either in said Millis, or Brookline, Massachusetts.

When I was informed early in December, 1904, that there was a "run" on the German-American Bank in the city of Buffalo and on the German Bank in said city of Buffalo, I proceeded directly to Buffalo, and conferred with the Clearing House Committee of the banks of the city of Buffalo, because of my interest as a stockholder in the German Bank. I had, about a week previous, paid one hundred thousand dollars ($100,000) on account of my loan at the German-American Bank, and I then offered to pay my indebtedness to the German Bank in six weekly payments. The Clearing

75 House Committee, however, told me that if I paid off my entire indebtedness, they would be unwilling to recommend the continuance of the bank, because of the fact that there was such a large amount of bad paper and poor assets, estimated at more than three quarters of a million dollars, which had been accumulated by the prior management before the time of my purchase of the controlling interest in the bank; although at the time of my purchase the condition of the bank was represented to me to be as shown in copy of statement hereto annexed, marked "Exhibit G," upon which I relied and which I then believed to be a statement of the true condition of the bank. It was then (December 4th, 1904) decided that if the run on the bank continued the next morning, the Superintendent of Banks should close the bank. The "run" continued, and on the morning of December 5th, 1904, the bank was closed and the necessary steps taken for the appointment of a receiver.

The last time I left Buffalo was December 5th, A. D. 1904, and I did so then because I had finished my business there, and for the purpose of returning to my home and business here in Boston, Massachusetts. Moreover, the suspension of the German Bank necessitated

my presence here and my immediate attention to my other interests. In fact, the loss of my investment in said German Bank caused me to suspend, and I have since been unable to meet my obligations, a large part of which are to citizens and banks in Massachusetts, with the further result that my interests in the stocks and notes of said electric railways in Ohio have been jeopardized by reason of the appointment of receivers thereon.

76 I did not know on December 5th, 1904, nor was I in any way informed that I had committed any offense in the State of New York, as I am alleged to have committed, in the indictment annexed to this requisition. I did not commit the acts which I am alleged to have committed, and what I did was done in the ordinary course of business. I returned to the City of Buffalo as I went there, in the usual course of my business, and in the conduct of my own affairs, and not to escape from any prosecution, and with no intention of fleeing from justice, for I had done nothing which I knew was wrong, and I had no consciousness of having committed anything for which I could be prosecuted under the laws of the State of New York. I am not and never have been a fugitive from justice.

ARTHUR E. APPLEYARD.

SUFFOLK, *ss:*

BOSTON, *February 20th*, 1905.

Subscribed and sworn to before me,

[SEAL.] FRED. H. WILLIAMS,
Notary Public.

7

EXHIBIT A.

(Copy.)

No. 792.

$50,000. BOSTON, *May* 14, 1904.

Ninety days after date, for value received, I promise to pay to German Bank, Buffalo, N. Y., or order, at its place of business Fifty Thousand Dollars, having deposited herewith as Collateral Security, 70 Ohio Union Traction Co. 5's Temp. Cfts. with authority to sell the same, or any collaterals substituted for or added to the

77 above, without notice, either at public or private sale, or otherwise, at the option of the said holder or holders hereof, on the non-performance of this promise, said holder or holders applying the net proceeds to the payment of this note, and accounting to me for the surplus, if any; and it is hereby agreed that such surplus, or any excess of collaterals upon this note, shall be applicable to any other note or claim against me held by said holder or holders. Should the market value of any security pledged for this loan, in the judgment of the holder or holders hereof, decline, I hereby agree to deposit on demand (which may be made by a notice in writing sent by mail or otherwise to my residence or place of business) additional collateral, so that the market value shall always be at least 20 per cent. more than the amount of this note; and failing to deposit such

additional security, this note shall be deemed to be due and payable forthwith, anything hereinbefore expressed to the contrary notwithstanding, and the holder or holders may immediately reimburse themselves by the sale of the security; and it is hereby agreed that the holder or holders of this note, or any person in his or their behalf, may purchase at any such sale.

With interest at 6% per annum after maturity.

(Signed) ARTHUR E. APPLEYARD.

Endorsed on back as follows: 92953. Aug. 12. The German Bank. Paid Aug. 11, 1904. Buffalo, N. Y.

78 EXHIBIT B.

(Copy.)

No. 968.

$50,000. BOSTON, *Aug.* 12, 1904.

Ninety days after date, for value received, I promise to pay to German Bank, Buffalo, N. Y., or order, at its place of business Fifty Thousand Dollars, having deposited herewith as Collateral Security 70 Ohio Union Traction Co. 5's with authority to sell the same, or any collaterals substituted for or added to the above, without notice, either at public or private sale, or otherwise, at the option of the said holder or holders hereof, on the non-performance of this promise said holder or holders applying the net proceeds to the payment of this note, and accounting to me for the surplus, if any; and it is hereby agreed that such surplus, or any excess of collaterals upon this note shall be applicable to any other note or claim against me held by said holder or holders. Should the market value of any security pledged for this loan, in the judgment of the holder or holders hereof, decline, I, hereby agree to deposit on demand (which may be made by a notice in writing sent by mail or otherwise to my residence or place of business) additional collateral, so that the market value shall always be at least 20 per cent. more than the amount of this note; and failing to deposit such additional security, this note shall be deemed to be due and payable forthwith, anything hereinbefore expressed to the contrary notwithstanding, and the holder or holders may immediately reimburse themselves by the sale of the security; and it is hereby agreed that the holder or holders of this
79 note, or any person in his or their behalf may purchase at any such sale.

With interest at 6% per annum after maturity.

(Signed) ARTHUR E. APPLEYARD.

Endorsed on face of note as follows: The German Bank paid Nov. 10, 1904. Buffalo, N. Y.

Endorsed on back as follows: Nov. 10. 97064.

EXHIBIT C.

Note, August 12, 90 *ds. Date.*

A. E. Appleyard.

Dated——

Collateral:

30,000. Ohio Union Traction bonds:

#476	477	478	479
480	481	242	243
244	245	246	247
248	249	250	251
252	253	254	255
256	257	258	259
260	261	201	202
203	204		

11,000 D., L. & C. 5's:

1106	1104	1108	1109
1510	1509	1508	614
613	612	1018	

7,000 Kenton & Southern 5's:

211	212	213	214
215	216	217	

80 27,000 Chippewa Valley El. Ry. 5's:

#116	1000
115	1000
114	1000
113	1000
112	1000
111	1000
110	1000
18	10000
17	10000
	27,000

EXHIBIT D.

(Copy.)

BOSTON, MASS., *Sept.* 17, 1904.

R. Emory, Esq., Pres't., German Bank, Buffalo, N. Y.

DEAR SIR: In line with arrangement made with you over the telephone yesterday, we are shipping you today by registered mail,

care of the bank, 44 D., L. & C. 5's and 6 Kenton & Southern 5's. Kindly advise safe arrival, and oblige,

Yours very truly,

(Signed) ARTHUR E. APPLEYARD, A.

HWE/H.

81 EXHIBIT E.

(Copy.)

THE GERMAN BANK, BUFFALO, N. Y., *Sept.* 19, 1904.

Arthur E. Appleyard, Esq., Boston, Mass.

DEAR SIR: We acknowledge receipt of registered package containing,

6,000 Kenton & So. 5's.
44,000 Dayton, Leb. & Cin. 5's.

for use as additional collateral.

Yours truly,

(Signed) C. F. COANEY, *Asst. to Prest.*

EXHIBIT F.

BOSTON, MASS., *Nov.* 8, 1904.

R. Emory, Esq., Pres't German Bank, Buffalo, N. Y.

DEAR SIR: We enclosed you herewith note for $50,000 in favor of the German Bank, dated the 10th inst., on 90 days' time, together with check for $750, covering discount at 6%.

Not having heard from you to the contrary, we assume that this will be in order, and would thank you to kindly send us the old note, duly cancelled.

You will notice that we have dated our discount check the 10th inst., may we ask you to kindly hold the same until that date, and oblige,

Yours very truly,

(Signed) H. W. EASTON, *Cashier.*

HWE/H.

82 EXHIBIT G.

(Face of Statement.)

Officers.—Eugene A. Georger, President; Robert F. Schelling, Vice-President; Paul Werner, Cashier; William P. Luedeke, Ass't Cashier.

The German Bank, Buffalo, N. Y.

Directors.—Eugene A. Georger, John Hauenstein, Jacob Dold, Robert F. Schelling, John P. Diehl, Adolph Machwirth.

(Back of Statement.)

The German Bank, Buffalo, N. Y.

Statement, December 8, 1903.

(Condensed.)

Resources.		*Liabilities.*	
Loans and Discounts.....	$4,626,135.51	Capital Stock	$100,000.00
Bonds.....	286,825.00	Undivided profits..	490,289.15
Bonds and Mortgages.....	231,594.58	Deposits.....	5,754,548.84
Real Estate.....	47,220.00		
Cash on hand and in Banks	1,153,063.10		
	$6,344,837.99		$6,344,837.99

83 EXHIBIT 2.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

In the Matter of the Application to the Governor of Massachusetts to Deliver ARTHUR E. APPLEYARD Upon Requisition from the Governor of New York.

Affidavit of Herbert M. Jenks.

I, Herbert M. Jenks, on oath depose and say that I am a resident of Washington, D. C., temporarily in Boston, in said Commonwealth.

I have known Arthur E. Appleyard since July 1st, 1902, and acted as General Manager of his Cincinnati office for a period of little over two (2) years. From about the first of February A. D. 1904 until the first of September, A. D. 1904, I was in the City of Buffalo, in the State of New York, and represented Mr. Appleyard in the matter of the purchase of the controlling interest in the German Bank and the German American Bank in the City of Buffalo.

During said period I also looked after Mr. Appleyard's general business, did his clerical work and opened the mail and express packages addressed to him, and made all the deposits and attended to all his business with the German Bank, so far as delivering papers and collateral security for notes, was concerned.

On the seventeenth day of May, A. D. 1904, in behalf of Mr. Appleyard, I delivered to Richard Emory, President of said German Bank, a note signed by Arthur E. Appleyard for ($50,000) fifty thousand dollars, dated May 14th, A. D. 1904, payable ninety
84 days after date to the order of said German Bank, and at the same time delivered to said Emory the remaining forty (40) Ohio Union Traction Company temporary certificates, (generally referred to as Ohio Union Traction Company bonds) of the par value of one thousand ($1000) dollars each, thirty (30) being already in the possession of said bank; a check for seven hundred and fifty ($750) dollars, representing the discount on said note for ninety

(90) days from said May 14th, A. D. 1904, at the rate of six per cent. (6%); also a check for twenty thousand ($20,000) dollars, dated May 17th, A. D. 1904, payable to the order of said German Bank, in payment of a draft for twenty thousand ($20,000) dollars dated May 13th, A. D. 1904, on said German Bank, said draft being payable to the order of the First National Bank of Boston, and bearing the signature of "A. E. Appleyard," which I knew to have been made by H. W. Easton, the Cashier in the Boston Office of said Appleyard. I understood this fifty thousand ($50,000) dollars was then placed to the credit of said Appleyard in said German Bank, to wit, May 17th, 1904.

I then entered on the check-book of said Appleyard, which I kept, the credit of fifty thousand ($50,000) dollars for said note, and notified the Boston office to that effect by letter, a copy of which is hereto annexed, marked "Exhibit A."

I also depose and say that I know Harry L. Doud, whose name appears as recording secretary at several meetings of the stockholders and directors of said Ohio Union Traction Company, and am familiar with his handwriting, and I also know R. Emory, whose name appears on the original records of said Ohio Union Traction
85 Company, and am familiar with his handwriting. I have compared the copies of the records of said Ohio Union Traction Company hereto annexed, marked "Exhibit B," with the original records of said Company, and hereby certify that said copies are true and correct copies of the original records, which are signed in different places by said Doud and said Emory.

I further depose and say that I know Mr. Applyard was in the city of Buffalo, in the State of New York, on the following dates: May 20th, 21st, 22d, 27th, June 1st, 13th, 14th, 21st, July 6th, 7th, 13th, 19th, 1904, because I was in said Buffalo on said dates, and saw and talked with him in connection with his business.

I know that said Appleyard was in said Washington, D. C., on the following dates: September 6th, 7th, 29th, October 3d, 4th, 5th, 6th, 1904, because I was in said Washington on said dates, and saw and talked with him in connection with his business.

I know that said Appleyard was in the city of Philadelphia, Pennsylvania, on the following dates: November 25th, 26th, 28th, 1904, because I was in said Philadelphia, Pennsylvania, on said dates, and saw and talked with him in connection with his business.

On all said dates Mr. Appleyard was travelling and attending to his business openly and freely, and conducting himself in his usual manner.

In witness whereof, I hereunto set my hand this twentieth day of February, A. D. 1905.

HERBERT M. JENKS.

86 BOSTON, *February* 20, 1905.

SUFFOLK, *ss:*

Subscribed and sworn to before me,

[SEAL.] FRED H. WILLIAMS,
Notary Public.

EXHIBIT A.

BUFFALO, 17 *May*.

Geo. B. Appleton, Esq., Boston.

DEAR SIR: Checks drawn today as follows:

German Bank (to take up Boston draft)	20,000.
G. D. Coaney	125.

Deposited Loan German Bk. 90 ds. $50000.

Yours truly,

H. M. JENKS.

87 EXHIBIT B.

The Ohio Union Traction Company.

First Stockholders' Meeting.

COLUMBUS, OHIO, *March 15th*, 1904.

Pursuant to formal notice given by the subscribers to the Articles of Incorporation of The Ohio Union Traction Company, to the subscribers to the capital stock of said company, to meet at the office of Pomerene & Pomerene, No. 50 Ruggery Building, Columbus, Ohio, on the 15th day of March, 1904, at 11.30 o'clock A. M., for the purpose of electing directors and transacting such other business as might come before said meeting, all the subscribers to the capital stock aforesaid met at the time and place above named, and thereupon in person or by proxy did execute a waiver of notice of said meeting, which waiver appears here upon the record of said corporation, as follows, to wit:

"The Ohio Union Traction Company.

Waiver of Notice of First Stockholders' Meeting.

We, the undersigned, being all the subscribers to the capital stock of The Ohio Union Traction Company, being all this day present in person or by proxy at the first meeting of the stockholders of said company at the office of Pomerene & Pomerene, No. 50 Ruggery Building, Columbus, Ohio, at 11.30 o'clock A. M., do hereby waive the notice of such meeting required by law.

Stockholder.	Proxy.	Number Shares.
(Signed) ARTHUR E. APPLEYARD	By RICHARD EMORY.	96
(Signed) R. EMORY		1
(Signed) W. H. MORGAN		
(Signed) O. F. EHRING		1
(Signed) HARRY L. DOUD		1

On motion of Mr. Morgan, duly seconded and carried, Mr. Emory was chosen Chairman and Mr. Doud Secretary of said meeting.

88 On motion of Mr. Ehring, the shares of capital stock of the corporation being cast in the affirmative and no shares of stock being cast in the negative, it was resolved that the Code of Regulations hereinafter set forth on pages 18 to 20 of this record be adopted as the Code of Regulations of this corporation, and that the written assent of the stockholders favoring the adoption of said regulations be recorded in the minutes of this meeting.

Thereupon all the subscribers to the capital stock of The Ohio Union Traction Company, duly executed a written assent to the adoption of the aforesaid code of regulations, as follows:

COLUMBUS, OHIO, *March 15th*, 1904.

We, the undersigned, being the owners of the number of shares of the capital stock of The Ohio Union Traction Company set opposite our respective names, do hereby assent, in writing, to the adoption of the Code of Regulations hereinafter set forth on pages 18 to 20 of this record, for the government of this corporation.

	Names.	Shares.
(Signed)	R. EMORY	1
(Signed)	ARTHUR E. APPLEYARD, By R. EMORY	96
(Signed)	W. H. MORGAN	
(Signed)	O. F. EHRING	1
(Signed)	HARRY L. DOUD	1

Thereupon Mr. Emory declared the election of the Board of Directors next in order.

The incorporators of the company were requested by the Chairman to act as inspectors of the election.

89 The election of directors was then duly proceeded with, and the names of Messrs. R. Emory, W. A. Morgan, O. F. Ehring, A. E. Appleyard and H. L. Doud were placed in nomination as candidates for the office of directors. No other names being proposed, a vote by ballot was taken with the following result: R. Emory, W. A. Morgan, O. F. Ehring, A. E. Appleyard and H. L. Doud received 100 votes respectively.

Thereupon the incorporators of the company as inspectors of the election announced that the persons above named had received the number of votes above stated, and thereupon Messrs. Appleyard, Emory, Morgan, Ehring and Doud were declared elected directors, and the following certificate of said election was made:

The Ohio Union Traction Company.

Certificate of Election of Directors.

We, the undersigned, being the only subscribers to the articles of incorporation of The Ohio Union Traction Company present at the

first meeting of the stockholders of said corporation, held at the office of Pomerene & Pomerene, 50 Ruggery Building, Columbus, Ohio, on the 15th day of March, 1904, at 11.30 o'clock, A. M., do hereby certify, that at an election for directors held at said meeting, and at which we acted as inspectors of election, 100 shares of stock were represented, 100 votes were cast in favor of R. Emory, 100 votes were cast in favor of W. A. Morgan, 100 votes were cast in favor of O. F. Ehring, 100 votes were cast in favor of A. E. Appleyard and 100 votes were cast in favor of H. L. Doud, and that at said election, R. Emory, W. A. Morgan, O. F. Ehring, A. E. Appleyard and H. L. Doud were each duly elected to the office of director of said
90 corporation, to hold their said offices until the next annual election of directors, or until their successors are elected and qualified and we do hereby appoint the office of Pomerene & Pomerene, 50 Ruggery Building, Columbus, Ohio, as the place, and the 15th day of March, 1904, at 12 o'clock M., as the time for holding the first meeting of said directors.

(Signed) R. EMORY.
(Signed) W. H. MORGAN.
(Signed) O. F. EHRING.
(Signed) HARRY L. DOUD.

Thereupon on motion said meeting duly adjourned.

(Signed) R. EMORY, *Chairman.*

(Signed) HARRY L. DOUD, *Secretary.*

The Ohio Union Traction Company.

Oath of Directors.

STATE OF OHIO,
County of Franklin, ss:

R. Emory, W. A. Morgan, O. F. Ehring, and H. L. Doud, being first duly sworn, say they will faithfully discharge their duties as directors of The Ohio Union Traction Company, to the best of their ability.

(Signed) R. EMORY.
(Signed) W. H. MORGAN.
(Signed) O. F. EHRING.
(Signed) HARRY L. DOUD.

Sworn to before me and subscribed in my presence this 15th day of March, 1904.

[SEAL.] (Signed) E. B. TAYLOR,
Notary Public, Franklin County, Ohio.

91 The Ohio Union Traction Company.

Directors' Meeting.

COLUMBUS, OHIO, *March 15th,* 1904.

Pursuant to notice duly given at a stockholders' meeting of The Ohio Union Traction Company held at 11.30 o'clock A. M. on the 15th day of March, 1904, the directors of said company met at the office of Pomerene & Pomerene, 50 Ruggery Building, Columbus, Ohio, at 12 o'clock M. on the 15th day of March, 1904, the following directors being present: Messrs. Emory, W. A. Morgan, O. F. Ehring and H. L. Doud.

An oath faithfully to perform their duties as directors of said company was taken by said directors before E. B. Taylor, a notary public. The meeting was called to order by Mr. Emory, who was duly chosen to act as Chairman, Mr. Doud was chosen to act as Secretary.

On motion of Mr. O. F. Ehring, duly seconded, the code of By-Laws for the government of this Board set forth on page 21 of this record was duly adopted.

Thereupon the Chairman declared the election of officers next in order, and, nomination having been made and a ballot taken, Mr. A. E. Appleyard was duly chosen President, Mr. R. Emory Vice-President; Mr. C. F. Coaney Secretary; Mr. Geo. B. Appleton, Treasurer; and Mr. Emory, General Manager.

Thereupon each of the above named persons was declared to be duly elected to the respective offices above named, and immediately commenced the performance of his official duties.

92 Thereupon on motion, duly seconded, the Board adjourned.

(Signed) R. EMORY, *Chairman.*

(Signed) HARRY. L. DOUD, *Secretary.*

The Ohio Union Traction Company.

COLUMBUS, OHIO, *March* 15, 1904.

We, the undersigned, being all the stockholders of The Ohio Union Traction Company, do hereby waive the giving of the notice required by law of a meeting to be held by the stockholders of said The Ohio Union Traction Company at No. 50 Ruggery Building, Ohio, on the 15th day of March, 1904, which meeting has been called by a majority of the board of directors of said corporation for the purpose of considering the subject of amending the articles of Incorporation of said The Ohio Union Traction Company so as to include Greene County, Ohio, as one of the counties through which said Company's line of railway shall pass.

R. EMORY
ARTHUR E. APPLEYARD,
By R. EMORY
W. H. MORGAN
C. F. EHRING
HARRY L. DOWD.

93 The Ohio Union Traction Company.

Waiver of Notice, Special Meeting of Stockholders.

We, the undersigned stockholders in The Ohio Union Traction Company do hereby waive all notice whatsoever whether required by the charter of by-laws of the company or by the laws of Ohio of a special meeting of the stockholders of the said company to be held at Columbus, Ohio, on the 15th dy of March, 1904, at 1 P. M.

Dated March 15, 1904.

	Shares.
ARTHUR E. APPLEYARD, by R. EMORY	96
R. EMORY	1
W. H. MORGAN	
C. F. EHRING	1
HARRY L. DOUD	1

The Ohio Union Traction Company.

A special meeting of the stockholders of The Ohio Union Traction Company was held at the office of the company at Columbus, Ohio, on the 15th day of March, 1904, pursuant to a waiver of notice signed by all the stockholders.

The meeting was called to order by the vice-president Mr. Emory, who acted as chairman in the absence of the President. Mr. Dowd, the Secretary, took minutes of the proceedings.

There were represented in person or by proxy 100 shares out of a total of 100 shares issued and ou-standing.

The secretary presented to the meeting a waiver of notice signed by all the stockholders which was ordered inserted in the records (see P. —)

94 The president stated to the meeting that negotiations were pending for the acquisition of various lines of railway in different parts of the State of Ohio and in order to pay for the same and in order to provide means to discharge or meet at its maturity the indebtedness already existing upon the said roads and to provide funds for other corporate purposes more especially the construction and equipment of this Company's line of railroad from Kenton to Findlay it appeared desirable to execute a mortgage covering the present and future rights and properties of this company for the purpose of securing an issue of bonds of this company. A form for said mortgage and bonds was presented to the meeting.

On motion duly made and seconded it was

Voted that the president or vice-president and secretary or assistant secretary are hereby authorized and directed to execute and issue First and Consolidatd Mortgage 5 per cent. Gold Bonds of this company to the aggregate amount of $700,000, the said bonds shall be numbered consecutively from 1 upwards each bond to be of the denomination of $1,000 and to be dated the 1st day of March, 1904 and payable the 1st day of March, 1944, and to bear interest at the rate of five per centum per annum payable semi-annually on the 1st days of March and September in each year and said bonds shall be subject to call at 110 on any interest payment day before maturity.

Voted, that for the purpose of securing the payment of the principal and interest of the said First and Consolidated Mortgage 5 per cent. Gold Bonds the President or Vice President and Secretary or Assistant Secretary are hereby further authorized and directed
95 to execute and deliver to the Security Trust Company of Camden, New Jersey, as Trustee, a mortgage or deed of trust to be known as First and Consolidated Mortgage conveying to the said Trustee and constituting a lien upon all of the railways and property real personal and mixed assets rights privileges and franchises of every description now owned or at any time hereafter acquired by this company. The said mortgage to provide that $700,000 bonds be issued forthwith and the balance to be issued for future extensions or additions at a rate which shall not exceed together with all existing liens upon the property of the Company the sum of $30,000 per mile of single track and $40,000 per mile of double track in main lines of the Company, outside of cities, or $60,000 per mile of single track and $40,000 additional per mile of double track in the main lines inside of cities not including switches and sidings.

Voted, that the form of the said First and Consolidated Mortgage 5 per cent. gold bonds and the said First and Consolidated Mortgage securing the same, be the same as those submitted to this meeting, and that all the provisions, stipulations and condition therein contained with reference to the issue of the said bonds and otherwise, are hereby ratified and approved, and the execution of the said bonds and mortgage by the President or Vice President shall be a sufficient identification of the same with those hereby authorized.

The President stated that by the laws of — Ohio it would be necessary to increase the capital stock of the company to $700,000 before the bonds this day authorized could be issued and on
96 motion duly made and seconded it was—

Voted, that the capital stock of this company be increased from $10,000 to $700,000 divided into 7000 shares of the par value of $100 each.

The President stated that arrangements had been made with the Great Northern Construction Company for the construction of this Company's railroad between Kenton and Findlay, Ohio, for the sum of $1,400,000, of which $700,000 shall be payable in stock, and $700,000 shall be payable in First and Consolidated Mortgage bonds above mentioned, and the President presented to the meeting a form of contract with the said Construction Company for the construction of the said line of railroad.

On motion duly made and seconded, it was—

Voted, that the President or Vice President is hereby authorized and directed to enter into a contract with the Great Northern Construction Company for the construction of the line of railroad of this Company, from Kenton to Findlay, Ohio, and the equipment of the same for the sum of $1,400,000, payable $700,000 in the stock of this company and $700,000 in the First Mortgage 5 per cent. Gold Bonds of this company this day authorized, and that the form of the said contract be such as the President or Vice President of this company may approve, and the execution of the said contract

by the President or Vice President shall be a sufficient identification of the same, with the one hereby authorized.

Voted, that the President, Vice President, Secretary, Assistant Secretary and Treasurer are hereby authorized to do all things and execute all papers which may be necessary to effectually carry
97 into effect the votes this day adopted.

On motion and by unanimous vote of all the stock present it was—

Voted, that Article Third of the Articles of Incorporation of this Company be amended so as to read as follows:

"Third: Said corporation is formed for the purpose of constructing, operating, maintaining, leasing, and owning street railways for the conveyance and transportation of passengers, packages, express matter, United States Mail, baggage and freight; said railways to be operated by electricity or by some motive power other than steam, and with all necessary switches, turnouts, side tracks and double tracks, stations, power houses, shops and other structures; together with all telephone and telegraph lines necessary or proper for its own use and convenience; and acquiring and holding all real estate and all accessories and appliances necessary or proper to carry out the purpose herein mentioned, and with the right to lease, purchase or sub-lease any line of street railway. Said line of street railway shall begin at a point in the City of Cincinnati, in Hamilton County, and extend Northwardly through the counties of Hamilton, Warren, Montgomery, Green, Clarke, Champaign, Logan, Hardin, Hancock, Wood, to a point in the City of Toledo in Lucas County, and also running from said point in Cincinnati through the counties of Hamilton, Warren, Montgomery, Green, Clarke, Madison, Franklin, Licking, Muskingum, Coshocton, Tuscarawas, Stark, Summit, to a point in the City of Cleveland in Cuyahoga County," and that a copy of such an amendment, signed by the President and Secretary of the corporation, under its corporate seal, be filed in the
98 office of the Secretary of State.

And thereupon all of the stockholders signed a consent in writing that the notice of publication required by law of the amendment of the articles of incorporation be waived, copy of which consent in writing is as follows:

The Ohio Union Traction Company.

COLUMBUS, OHIO, *March 15th*, 1904.

We, the undersigned, being all the stockholders of The Ohio Union Traction Company, do hereby consent in writing that the notice by publication required by law of the amendment made to the articles of incorporation of said The Ohio Union Traction Company at a meeting of its stockholders held at No. 50 Ruggery Building, on the 15th day of March, 1904, be and the same is hereby waived.

(Signed) ARTHUR E. APPLEYARD,
By R. EMORY.
W. H. MORGAN.
C. F. EHRING.
HARRY L. DOUD.

There being no further business, on motion the meeting adjourned.

R. EMORY, *Chairman.*

HARRY L. DOUD, *Secretary.*

99 The Ohio Union Traction Company.

Directors' Meeting.

A special meeting of the board of directors of The Ohio Union Traction Company was duly held pursuant to waiver of notice at the office of the company at Columbus, Ohio, on the 15th day of March, 1904.

The meeting was called to order by Mr. Emory, the vice-president. Mr. Doud, the Secretary, took minutes of the proceedings.

There were present Messrs. Emory, Morgan, Ehring and Doud, constituting a quorum of the board.

The records of the special meeting of stockholders held on the 15th day of March, 1904, authorizing the issue of $700,000 First and Consolidated Mortgage 5 Per Cent. Gold Bonds and the execution and delivery of a First Mortgage securing the same to the Security Trust Company were read and a form of the said Mortgage and Bonds similar to that presented to the said special meeting of stockholders was submitted to the board.

On motion duly made and seconded the following resolution was unanimously passed:

Resolved that the proceedings taken at the special stockholders' meeting held on the 15th day of March, 1904, authorizing the issue of $700,000 First and Consolidated Mortgage 5 Per Cent. Gold Bonds and the execution and delivery of a First and Consolidated Mortgage to the Security Trust Company securing the same and authorizing the issue of additional bonds at a certain rate per mile more particularly set forth in the form submitted to this board are hereby ratified and confirmed and the form of the said First and
100 Consolidated Mortgage and Bonds submitted to this board and the terms and provisions thereof are hereby approved and the execution of the same by the president or vice-president shall be a sufficient identification of the same with that hereby authorized.

A form of contract to be entered into with the Great Northern Construction Company for the construction of the line of railroad of this company from Kenton to Findlay, Ohio, for the sum of $1,400,000 of which $700,000 shall be payable in the stock of this company and $700,000 in the First and Consolidated Mortgage Gold Bonds of this company this day authorized was presented to the meeting.

On motion duly made and seconded it was

Voted that the president or vice-president *are* hereby authorized and directed to enter into a contract with The Great Northern Construction Company for the construction of the line of railroad of this company from Kenton to Findlay, Ohio, for the sum of $1,400,000, of which $700,000 shall be payable in stock of this company and $700,000 in the First and Consolidated Mortgage Bonds of this

company this day authorized and that the form of the said contract be the same as that submitted to this meeting and that the terms, provisions and stipulations therein contained are hereby ratified and approved and the execution of the said contract by the president or vice-president shall be a sufficient identification of the same with the one hereby authorized and that a copy of said contract be inserted in the records of this company. (See p. —.)

101 There being no further business, on motion the meeting then adjourned.

—— ——, *Vice-President.*

(Signed) HARRY L. DOUD, *Secretary.*

The Ohio Union Traction Company.

COLUMBUS, OHIO, *May 30th,* 1904.

A meeting of the board of directors of The Ohio Union Traction Company was this day held, the directors present being Messrs. Emory, Doud and Ehring. The resignation of Mr. Morgan as a director of this company was presented, and on motion was accepted. Thereupon on motion Mr. T. Stebbins was unanimously elected a director of this company, vice Mr. Morgan, resigned.

(Signed) HARRY L. DOUD, *Secretary.*

The Ohio Union Traction Company.

Directors' Meeting.

COLUMBUS, OHIO, *June 27th,* 1904.

A meeting of the board of directors was this day held at the office of the company, the directors present being Messrs. Stebbins, Doud and Ehring. Mr. Doud was chosen Chairman of the meeting and Mr. Stebbins Secretary, Mr. Stebbins having qualified as a director. The resignation of Mr. Emory as director and Vice-President of the company was received and on motion accepted. Thereupon by vote of all the directors present Mr. C. A. Alderman was elected director of the company, vice Mr. Emory, resigned. Mr. Alderman

102 thereupon appeared and qualified as a director.

By vote of all the directors present, Mr. Stebbins was elected Vice-President of the company, vice Mr. Emory, resigned.

Thereupon Mr. Ehring tendered his resignation as a director, which was accepted, and Mr. Walter E. Robinson was elected by vote of all the directors present as a director to fill the vacancy caused by the resignation of Mr. Ehring.

There being no further business, the meeting thereupon adjourned.

(Signed) HARRY L. DOUD, *Chairman.*

—— ——, *Secretary.*

103 EXHIBIT 3.

STATE OF NEW YORK,
County of New York, ss:

Dean Sage, being sworn, says: I am an attorney at law associated with Messrs. Simpson, Thacher & Bartlett, of 25 Broad Street, New York City; that during the months of November and December, 1904, I saw Arthur E. Appleyard on several occasions in the City of New York, State of New York, and in the City of Buffalo, State of New York. For the purposes of refreshing my recollection, I have consulted the Register regularly kept in the office of Simpson, Thacher & Bartlett, in which is entered daily the conferences, appointments, etc., of the different members of the office. Said register contains entries showing that on November 3, 1904, I was in the City of Albany, State of New York, in company with Arthur E. Appleyard, at the offices of the State Superintendent of the Banking Department in regard to matters having to do with the German-American Bank of Buffalo. Said register contains entries showing that on November 18, 1904, I conferred with Mr. Appleyard in regard to the matters of the German-American Bank at the offices of Simpson, Thacher & Bartlett, 25 Broad Street, New York City. Said register contains entries showing that I conferred with Arthur E. Appleyard at the same place and in regard to the same matter on November 22nd, 1904. Said register contains entries showing that I conferred with Arthur E. Appleyard at the same place and in regard to the same matter on December 2nd, 1904. Said register contains entries showing that on December 4th and 5th, 1904, I conferred
104 with Arthur E. Appleyard in Buffalo, New York. Without reference to the entries contained in said register, I saw Arthur E. Appleyard several times in New York City, at the offices of Simpson, Thacher & Bartlett, 25 Broad Street, New York, during the month of November, 1904, and there conferred with him in regard to matters relating to the German-American Bank of Buffalo. Without referring to the entries in said register, I saw Arthur E. Appleyard in Buffalo, New York, at the Iroquois Hotel and at other places there, on December 4th and 5th, 1904. Without reference to the entries in said register, I saw Arthur E. Appleyard at the city of Albany, State of New York, both at the Ten Eyck Hotel and at the office of the Superintendent of the Banking Department of the State of New York some time in November, 1904, and on or about the 3rd day of November, 1904.

DEAN SAGE.

Sworn to before me this 16th day of February, 1905.

[SEAL.] ROSS A. MACKEY,
Notary Public, #179, *Kings County*.

Certificate filed in New York County.

105 EXHIBIT 4.

In the Matter of the Application to the Governor of Massachusetts to Deliver up ARTHUR E. APPLEYARD upon the Requisition of the Governor of New York.

STATE OF NEW YORK,
County of New York, ss:

Frederick B. Van Vorst, being first duly sworn on oath, deposes and says, that he resides at Hackensack in the State of New Jersey and is a practising lawyer having his office at No. 25 Broad Street in the City of New York where he is a member of the law firm of Underwood, Van Vorst & Hoyt. That deponent knows said Arthur E. Appleyard of Boston, Massachusetts. That on the 17th day of August, 1904, deponent saw said Appleyard at deponent's said office in New York City. That again on September 12th, 1904, deponent saw said Appleyard at the same place; and again on October 11th, 1904, and again on October 12th, 1904, said Appleyard called on deponent at the same place. That on or about October 19th, 1904, said Appleyard called upon deponent at a hotel in New York City. That on October 29th, 1904, and again on November 17th, 1904, and again on November 18th, 1904, and again on November 22nd, 1904, said Appleyard called upon deponent, on each of said times at deponent's said office in New York City. That on November 27th, 1904, deponent saw said Appleyard at the residence of a Mr. Sage at No. 821 Madison Avenue, New York City. Deponent further believes that he also saw said Appleyard in New York City on December 2nd, 1904, but deponent is not positive as to this last named date because he has no memorandum thereof.

On none of these occasions was there any appearance that said Appleyard was making a secret of his visits to New York City
106 or to the office of this deponent or to the other places where this deponent saw him, said Appleyard having presented himself on each occasion in an entirely open and ordinary way.

I make the foregoing affidavit at the request of Mr. W. M. K. Olcott of this city, one of Mr. Appleyard's counsel, I having no interest in the matter and having only consented to make this affidavit because Mr. Olcott tells me that if I do not he will attempt to take my foregoing evidence in a formal and compulsory way.

FRED'K B. VAN VORST.

Sworn to before me this 17th day of February, 1905.
[SEAL.] WM. A. THOMPSON,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

STATE OF NEW YORK,
County of New York, ss:

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being

a Court of Record, do hereby certify That Wm. A. Thompson has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and believe that the signature to the annexed certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 18 day of Feb'y, 1905.

[SEAL.] THOS. L. HAMILTON, *Clerk.*

107 EXHIBIT 5.

In the Matter of the Application to the Governor of Massachusetts to Deliver up ARTHUR E. APPLEYARD upon the Requisition of the Governor of New York.

STATE OF NEW YORK,
County of New York, ss:

Fred A. Reed being first duly sworn on oath deposes and says that he resides at The Park Avenue Hotel in the Borough of Manhattan, City, County and State of New York, and is a member of the firm of Reed & Barnett. That said firm are the proprietors of the Park Avenue Hotel which is located at 32nd Street & Park Avenue in the Borough of Manhattan in the City, County and State of New York. That deponent knows said Arthur E. Appleyard of Boston, Massachusetts. That deponent has referred to the register and records of the said Hotel and has ascertained therefrom that said Appleyard was at said Hotel on August 16, August 17, September 12, October 11, October 12, October 19, November 17, November 18, November 26, November 27, November 29, November 30, all in the year 1904.

FRED A. REED.

Sworn to before me this 16th day of February, 1905.

[SEAL.] ROBT. C. TEN EYCK,
Notary Public, N. Y. Co., No. 12.

108 STATE OF NEW YORK,
County of New York, ss:

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify That Robt. C. Ten Eyck before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said County, duly appointed and sworn, and authorized to administer oaths to be used in any Court in said State, and for general purposes; that I am well acquainted with the handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 16 day of Feb'y, 1905.

[SEAL] THOS. L. HAMILTON, *Clerk.*

109 EXHIBIT 6.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

In the Matter of the Application to the Governor of Massachusetts to Deliver ARTHUR E. APPLEYARD upon Requisition from the Governor of New York.

Affidavit of Alonzo E. Locke.

I, Alonzo E. Locke, on oath depose and say that I am resident of Lexington, Massachusetts, a member of the firm of Adams & Co., bankers, with an office in the Worthington Building, No. 31 State Street, Boston, in said Commonwealth.

I have known Arthur E. Appleyard for several years, and I know that he was in Buffalo in the State of New York, on the 22nd day of May, and on the 5th and 19th days of July, in the year 1904, for I was present with him in that city.

I further know that he was in the City of Albany in the State of New York, in the early part of November in the year 1904, for I was with him on a certain day in Albany on business, and to the best of my recollection and in accordance with my belief, that day was the third of November, A. D. 1904.

On each of said dates Mr. Appleyard travelled openly and attended to his business in the usual manner.

In Witness Whereof, I hereunto set my hand this seventeenth day of February, A. D. 1905.

ALONZO E. LOCKE.

BOSTON, *Feb.* 17, 1905.

SUFFOLK, *ss:*

Subscribed and sworn to before me.

[SEAL] FRED H. WILLIAMS,
Notary Public.

110 EXHIBIT 7.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

In the Matter of the Application to the Governor of Massachusetts to Deliver ARTHUR E. APPLEYARD upon Requisition from the Governor of New York.

Affidavit of Frances C. Appleyard.

I, Frances C. Appleyard, of Millis, in said Commonwealth, on oath depose and say that I am the wife of Arthur E. Appleyard, and

that I went with him from our home in Brookline, Massachusetts, to New York, where we stopped at the Park Avenue Hotel on the 26th and 27th days of November, 1904, that we then went ot Philadelphia, where we stopped at the Hotel Bellevue-Stratford, returning to New York on November 29th, 1904, where we spent November 29th and 30th, A. D. 1904. During each of said dates my said husband was attending to his business in the cities of New York and Philadelphia respectively.

In Witness Whereof, I hereunto set my hand this twentieth day of February, A. D. 1905.

FRANCES C. APPLEYARD,

BOSTON, *February 20th*, 1905.

SUFFOLK, *ss:*

Subscribed and sworn to before me,

[SEAL] FRED H. WILLIAMS,
Notary Public.

111 EXHIBIT 8.

Affidavit of James T. Twitty.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

James T. Twitty, being duly sworn, deposes and says that he is a resident of the city of Buffalo in the county of Erie and State of New York, and that he conducts a riding academy in said city; that he is personally acquainted with A. E. Appleyard.

That in the spring of 1904, Mr. Emory, Mr. Coaney and Mr. Appleyard frequented the establishment of deponent and took lessons in horseback-riding; that these three gentlemen generally came in company but that at times only two would be present, and occasionally one would appear in the place and stead of another for whom an engagement had been made; that an engagement was made on the 18th day of May, 1904, for two horses for use in the evening of that day, one of them being engaged in the name of Mr. Appleyard; that both horses were used and paid for, but deponent is unable to state whether Mr. Appleyard was present and used one of such horses or not; that the practice of these gentlemen was to substitute for each other frequently, and that such might have been done on May 18th, 1904, without any note being made of the same on deponent's records or any attention being paid to it; that there is no record on deponent's books of any charge against said Appleyard for the use of a horse on the 18th day of May, 1904.

That deponent appends to this affidavit a copy of all the account that he finds upon his books of account against said Apple-
112 yard, the first item charged to him upon such books being under date of May 21st, 1904; if any horses were obtained prior to that date or used by Mr. Appleyard they were paid for in cash, but the only memorandum that deponent has of any charge made against

said Appleyard for the use of horses is embodied in said bill, the first item being on May 21st, 1904.

JAMES T. TWITTY.

Sworn to before me, this 16th day of February, 1905.

JOHN J. HENRY,
Commissioner of Deeds in and for the City of Buffalo, N. Y.

STATE OF NEW YORK,
County of Erie, ss:

I, John H. Price, Clerk of the County of Erie, and also Clerk of the Supreme and County Courts for said County, the same being Courts of Record, do hereby certify that John J. Henry whose name is subscribed to the certificate of the proof, acknowledgment or affidavit of the annexed instrument in writing was, at the time of taking such proof, acknowledgment or affidavit, a Commissioner of Deeds in and for the City of Buffalo, in said County, duly commissioned and sworn and authorized to take and certify the same; and further, that I am well acquainted with the handwriting of such Commissioner of Deeds, and verily believe the signature to the said certificate of proof, acknowledgment or affidavit is genuine.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County and Courts of Buffalo, this 16th day of February, 1905.

[SEAL.] J. H. PRICE, *Clerk.*

No. 2635.

113 (Duplicate.)

BUFFALO, N. Y., *Feb.* 13, 1905.

Mr. A. E. Appleyard to Twitty's Riding Academy and Horse Exchange, 26-28 E. North St., Near Main, Dr.

Branch, Lake View, N. Y.

May	21	To use of horse	$3.00
"	22	" " " "	3.00
"	22	" " " " (Mr. Lock)	3.00
"	28	" " " "	3.00
June	8	" " " "	3.00
"	9	" lesson	2.00
"	9	" " (friend)	2.00
"	20	" use of horse	2.25
"	20	" " " " (Mr. Coaney)	2.25
"	22	" " " "	3.00
"	22	" " " " (Mr. Coaney)	3.00
"	23	" " " "	3.00
July	5	" " " "	1.50
"	7	" " " "	3.00
			37.00

Received Paym't, JAMES T. TWITTY.
B.

114 EXHIBIT 9.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Lawrence McCormick, being duly sworn according to law, deposes and says that he was during the period extending from October 12th, 1904, to November 27th, 1904, proprietor of the Hotel Bellevue-Stratford; that he has examined the Register of the said hotel showing the persons registered thereat as guests of said hotel during the period aforesaid, and that it appears from the said register that A. E. Appleyard was registered as a guest at said hotel on the dates hereinafter specified, and upon each occasion remained as a guest of said hotel until the time specified, to wit:

From October 12th, 1904, to October 14th, 1904, and from November 14th, 1904, to November 17th, 1904, and from November 25th, 1904, to November 26th, 1904.

LAWRENCE McCORMICK.

Sworn to and subscribed before me this fifteenth day of February, A. D. 1905.

[SEAL.]

STACY B. LLOYD,
Notary Public.

Commission Expires February 6th, 1909.

115 *Affidavit (Notary).*

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I, M. Russell Thayer, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do by my Deputy Charles B. Roberts, authorized by Act of Assembly of May 26, 1897, Certify, That Stacy B. Lloyd, Esquire, before whom the annexed affidavit was made was at the time of so doing, a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds of Conveyance for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In Testimony Whereof, I have hereunto set my hand and affixed

the seal of said Court this 16 day of Feb'y in the year of our Lord one thousand nine hundred and five (1905).

[SEAL.] M. RUSSELL THAYER, *Prothonotary*,
By C. B. ROBERTS, *Dep. Prothonotary*.

Durante absentia, secundum legem.

116 EXHIBIT 10.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

George W. Sweet, being duly sworn according to law, deposes and says that he was during the period extending from July 24, 1904 to July 28th, 1904, Manager of the Hotel Walton; that he has examined the Register of the said Hotel showing the persons registered thereat as guest- of said Hotel during the period aforesaid, and that it appears from the said Register that A. E. Appleyard was registered as a guest at said Hotel on the date hereinafter specified, and upon that occasion remained as a guest of said Hotel until the time specified, to wit:

From July 26th, 1904 to July 27th, 1904.

GEO. W. SWETT.

Sworn to and subscribed before me this fifteenth day of February, A. D. 1905.

[SEAL.] STACY B. LLOYD,
Notary Public.

Commission Expires February 6th, 1909.

117 *Affidavit (Notary).*

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I, M. Russell Thayer, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do by my Deputy Charles B. Roberts, authorized by Act of Assembly of May 26, 1897, Certify, That Stacy B. Lloyd, Esquire, before whom the annexed affidavit was made was at the time of so doing, A Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgment and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 16 day of Feb'y, in the year of our Lord one thousand nine hundred and five (1905).

[SEAL.] M. RUSSELL THAYER, *Phothonotary,*
By C. B. ROBERTS, *Dep. Prothonotary.*

Durante absentia, Secundum Legem.

118 EXHIBIT 11.

DISTRICT OF COLUMBIA, *To wit*:

Albert S. Carter, being first duly sworn according to law, deposes and upon oath says that he is a book-keeper employed by The New Willard Hotel, in the City of Washington, District of Columbia, and that, according to the books of the Hotel kept by him and under his charge, Arthur E. Appleyard, of Boston, Massachusetts, was registered as a guest of the hotel on the dates and assigned to the rooms hereinafter stated, to wit: Room 816 from August 8 to 10, 1904, both inclusive; room 813 on Auguest 29, 1904; room 541 from September 6 to 7, 1904, both inclusive; room 442 from September 22 to 24, 1904, both inclusive; room 442 from September 28 to Octo-1, 1904, both inclusive; room 207 from October 3 to 6, 1904, both inclusive; room 241 from October 17 to 18, 1904, both inclusive; room 305 from October 25 to 26, 1904, both inclusive; and room 207 on November 2, 1904.

ALBERT S. CARTER.

Subscribed and sworn to before me this fourteenth day of February, A. D. 1905.

[SEAL.] HUGH B. ROWLAND,
Notary Public.

119 DISTRICT OF COLUMBIA, *ss*:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having a seal, do hereby certify that Hugh B. Rowland, before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument is genuine.

In witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 15th day of February, A. D. 1905.

[SEAL.] JOHN R. YOUNG, *Clerk.*

120 EXHIBIT 12.

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

A. Joseph Kingsbury, being duly sworn according to law, deposes and says that from the month of January, 1904, to the month of January, 1905, he was a Director in the Camden National Bank, a National Bank located and doing business in the City of Camden in the State of New Jersey; that during the same period Charles F. Coaney was also a Director and Vice President of said Camden National Bank; that on Wednesday, the 18th day of May, 1904, the regular meeting of the Board of Directors was held in the banking room, in the City of Camden, New Jersey, between the hours of eleven and twelve o'clock in the morning of that day, that this deponent was present at the said meeting on said 18th day of May, 1904, and there saw the said Charles F. Coaney, who was and is personally known to this deponent, and who was also present at said meeting of said Board; that in addition to the deponent's recollection of the fact aforesaid, he has examined the minutes of the meeting of said 18th day of May, 1904, and that it appears from said minutes that said Charles F. Coaney, among others, was present at said meeting on that day.

A. JOSEPH KINGSBURY.

Sworn to and subscribed before me this fifteenth day of February, A. D. 1905.

[SEAL.] STACY B. LLOYD,
Notary Public.

Commission Expires February 6th, 1909.

121 *Affidavit (Notary).*

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I, M. Russell Thayer, Prothonotary of the County of Philadelphia and Clerk of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do by my Deputy Charles B. Roberts, authorized by Act of Assembly of May 26, 1897, Certify, That Stacy B. Lloyd, Esquire, before whom the annexed affidavit was made was at the time of so doing, a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and

verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 16 day of Feb'y in the year of our Lord one thousand nine hundred and five (1905).

[SEAL.] M. RUSSELL THAYER, *Prothonotary,*
By C. B. ROBERTS, *Dep. Prothonotary.*

Durante absentia, secundum legem.

122 EXHIBIT 13.

STATE OF NEW YORK,
County of New York, ss:

I, Guy M. Walker, a citizen of New York, residing at #504 West 112th Street, in the City of New York, by profession a lawyer, with an office at 15 Wall Street in the City of New York, being duly sworn, on oath depose and say:

That on the 20th day of January, 1905, I was in the City of Buffalo, New York; that there I met one Richard Emory who said to me that he had been for some time past the President of the German Bank of that city, which Bank had recently failed and gone into the hands of a Receiver, and said Richard Emory did then and there tell me that the State authorities had through his attorney made him a promise of immunity from criminal prosecution on account of the failure of said Bank if he, the said Emory, would make a complete statement of the facts causing said failure; that in consideration of said promise of immunity he, the said Emory, had made a complete statement to the District Attorney, but that the District Attorney was dissatisfied with the complete statement made by said Emory because said statement did not contain facts incriminating anybody, and on this account the said District Attorney had shown a disposition to retract and withdraw the said promise of immunity made to the said Emory in consideration of his giving said statement, but that he, the said Emory, was relying upon said promise of immunity so given to him because the promise had been made to him in consideration of and before he made said statement, and that he had made a full and complete statement
123 as he had promised to do, and that it was no fault of his if said statement did not contain facts incriminating anybody.

Witness my hand this 18th day of February, 1905.

GUY M. WALKER.

Sworn to before me this 18th day of February, 1905.

[SEAL.] A. J. HEERMANCE,
Notary Public, 169, *New York County.*

STATE OF NEW YORK,
County of New York, ss:

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, That A. J. Heermance, before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said County, duly appointed and sworn, and authorized to administer oaths to be used in any Court in said State, and for general purposes; that I am well acquainted with the handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 18 day of Feb'y, 1905.

[SEAL.] THOS. L. HAMILTON, *Clerk.*

124 This cause thereupon came on to be heard upon the Return on Writ of *Habeas Corpus* and the Petitioner's Offer of proof and Requests for Rulings and Findings, the Honorable Francis C. Lowell, Circuit Judge, sitting, and after consideration thereof the following Decree is entered:

Decree.

April 22, 1905.

LOWELL, *J.:*

This cause came on to be heard and was fully argued by counsel for the respective parties upon the officer's return on the writ of *habeas corpus* and the petitioner's offer of proof, requests for rulings and requests for findings of fact and it is thereupon ordered and decreed as follows:

First. That the petitioner's first and second requests for rulings be and the same are hereby refused.

Second. That the petitioner's third request for rulings be and the same is hereby granted.

Third. That the petitioner's request for findings of facts be and the same is hereby refused.

Fourth. That the petition for a writ of *habeas corpus* be and the same is hereby dismissed and the writ of *habeas corpus* discharged.

Fifth. That the said Arthur E. Appleyard, petitioner, claiming an appeal to the Supreme Court of the United States and the same being allowed, be allowed forthwith to file a bond in this cause in the sum of fifteen thousand dollars, with sufficient surety or sureties to be approved by the Clerk of this Court, conditioned that the said Arthur E. Appleyard shall appear in this Court at the term on which the mandate of the Supreme Court, issued upon the hearing
125 of said appeal in said Supreme Court, shall be received and filed in this Circuit Court, and that the said Arthur E. Apple-

yard shall do and receive that which by this Court shall be then and there enjoined upon him and not depart without license.

By the Court:

BENJ. H. BRADLEE,
Deputy Clerk.

A true record:
Attest:

ALEX. H. TROWBRIDGE, *Clerk.*

126 *Claim of Appeal.*

(Filed April 22, 1905.)

Now comes the petitioner in the above entitled case and appeals to the Supreme Court of the United States from the decision rendered by this Honorable Court in said case.

By His Attorneys, WILLIAMS & COPELAND.

And now, to wit, April 22, 1905, comes the petitioner and claims an appeal from the said order or decree of said United States Circuit Court for the District of Massachusetts to the Supreme Court of the United States and said appeal is allowed.

FRANCIS C. LOWELL,
U. S. Circuit Judge.

127 *Assignment of Errors.*

(Filed May 8, 1905.)

First. The Court erred in refusing to rule that upon all the evidence the petitioner was not a fugitive from justice within the meaning of Section 2 of Article 4 of the Constitution of the United States, and of Section 5278 of the Revised Statutes of the United States, and should therefore be discharged from custody.

Second. The Court erred in refusing to rule that unless it appeared positively by a preponderance of the evidence that the petitioner consciously fled from justice when he left the State of New York, he should be discharged from custody.

By His Attorney, FRED H. WILLIAMS.

128 (Copy.)

Bond to Party on Appeal.

(Filed and Approved Aug. 8, 1905.)

Know all men by these presents, That we, Arthur E. Appleyard, of Millis, in the State of Massachusetts, as principal, and Harold P. Williams, of Brookline, in said State of Massachusetts, as surety,

are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of two hundred dollars to be paid to the said Commonwealth of Massachusetts, or its certain attorney, to which payment well and truly to be made we bind ourselves, jointly and severally, by these Presents.

Sealed with our seals, and dated the — day of August, in the year of our Lord one thousand nine hundred and five.

Whereas lately at a Circuit Court of the United States for the District of Massachusetts in a cause entitled Arthur E. Appleyard, petitioner for a writ of *habeas corpus*, a decree was rendered against the said Arthur E. Appleyard and the said Arthur E. Appleyard having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the 31st day of August, A. D. 1905.

Now the condition of the above obligation is such, that if the said Arthur E. Appleyard shall prosecute his said Appeal to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

ARTHUR E. APPLEYARD. [L. S.]
HAROLD P. WILLIAMS. [L. S.]

Signed, sealed and delivered in presence of
H. W. EASTORY.

Approved:
FRANCIS C. LOWELL,
U. S. Circuit Judge.

The above bond is satisfactory to the Commonwealth of Massachusetts.

ARTHUR W. DEGOOSH,
Ass't Att'y Gen.

129 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, Washington, D. C., on the* thirty first day of August next, pursuant to an Appeal duly obtained from a decree of the† Circuit Court of the United States for the District of Massachusetts wherein Arthur E. Appleyard, of Millis, in the County of Norfolk, in the district of Massachusetts, Petitioner for Writ of *Habeas Corpus* is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the

said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Francis C. Lowell, Judge of the Circuit Court of the United States for the District of Massachusetts this eighth day of August, in the year of our Lord one thousand nine hundred and five.

FRANCIS C. LOWELL,
U. S. Circuit Judge.

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*Not exceeding thirty days from the day of signing.
†Name of Court in which the Decree is entered.

130 *Acknowledgment of Service on Citation.*

BOSTON, MASS., *Aug.* 10/1905.

Service of the within citation is hereby acknowledged for the Commonwealth of Massachusetts.

HERBERT PARKER,
Attorney-General,
By FREDERIC B. GREENHALGE,
Assistant Attorney-General.

131 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Massachusetts, ss:*

I, Alexander H. Trowbridge, Clerk of the Circuit Court of the United States for the District of Massachusetts, within the First Circuit, certify that the foregoing is a true copy of the record and all proceedings of said Circuit Court in the cause entitled No. 1559, Law Docket, Arthur E. Appleyard, petitioner for Writ of *Habeas Corpus,* in said Circuit Court determined, the Claim of Appeal and Assignment of Errors, and the Bond to Party on Appeal, and also the original Citation issued upon the appeal of the petitioner in said cause, with the Acknowledgment of Service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at Boston, in said District, this twenty first day of August, A. D. 1905.

[Seal of the Circuit Court, Massachusetts.]

ALEX. H. TROWBRIDGE, *Clerk.*

Endorsed on cover: File No. 19,901. Massachusetts C. C. U. S. Term No. 115. Arthur E. Appleyard, Appellant, *vs.* The Commonwealth of Massachusetts. Filed September 9th, 1905. File No. 19,901.

FILE COPY.

Supreme Court of the United States.

No. 115.

OCTOBER TERM, 1908.

Office Supreme Court.
FILED
NOV 6 190
JAMES H. McKEN

ARTHUR E. APPLEYARD, APPELLANT,
PETITIONER FOR WRIT OF HABEAS CORPUS,

v.

THE COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR PETITIONER, APPELLANT.

The Fort Hill Press
SAMUEL USHER
175 TO 184 HIGH STREET
BOSTON, MASS.

Supreme Court of the United States.

No. 115. October Term, 1906.

ARTHUR E. APPLEYARD, Appellant,
Petitioner for Writ of Habeas Corpus,
v.
THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR PETITIONER, APPELLANT.

I.

The petitioner, Arthur E. Appleyard, a resident of the state of Massachusetts, was, on April 18, 1905, arrested by Frederick A. Rhoades, a member of the district police of the Commonwealth of Massachusetts, under a warrant issued by the governor of the Commonwealth of Massachusetts upon the request of the governor of the state of New York, on the ground that the said Arthur E. Appleyard was then a fugitive from justice from the State of New York under an indictment charging him with the crime of grand larceny in the first degree, alleged to have been committed by the said Arthur E. Appleyard in Buffalo, in said state of New York, on May 18, 1904.

On April 18, 1905, the petitioner filed in the Circuit Court of the United States for the District of Massachusetts a petition for a writ of habeas corpus upon the ground that said warrant and order for arrest were issued without authority of law and contrary to the Constitution and laws of the United States and of the Commonwealth of Massachusetts, and especially contrary to Section 2, Article 4, of the Constitution of the United States, and contrary to the provisions of Section 5278 of the Revised Statutes of the United States, for the reason that the petitioner was not a fugitive from justice.

On April 20, 1905, a writ of habeas corpus was issued from said Court, and on April 22, 1905, the petitioner was brought before said Court under said writ.

On said April 22, 1905, a hearing was had before said Court upon said petition.

At said hearing there were presented to said Court the various documents set forth in the transcript of the record of the Circuit Court, being among other things the petition, the request of the governor of the state of New York to the governor of the Commonwealth of Massachusetts for the arrest and extradition of the petitioner as a fugitive from justice, the indictment against the petitioner by the Grand Jury of Erie County in the State of New York, the affidavits, on the part of the Commonwealth, of Richard Emory, Charles F. Coaney, James Holmes, Edward E. Coatsworth, Albert J. Wheeler and James T. Twitty, the report of the attorney-general for the Commonwealth of Massachusetts to the governor of the Commonwealth, and the warrant.

There were also presented, on behalf of the petitioner, various affidavits which are found in the transcript of the record.

The petitioner presented, among others, the following requests for rulings:

First. That on all the evidence it does not appear that Arthur E. Appleyard is a fugitive from justice within the meaning of Section 2, Article 4, of the Constitution of the United States, and of Section 5278 of the Revised Statutes of the United States, and he should therefore be discharged from custody.

Second. That unless it appears positively by a preponderance of the evidence that Mr. Appleyard consciously fled from justice when he left the state of New York, he should be discharged from custody.

On said April 22, 1905, the Court entered a decree refusing to give the foregoing rulings requested, ordering said petition for a writ of habeas corpus to be dismissed, and the writ of habeas corpus discharged, and on the same day the petitioner appealed to the Supreme Court of the United States from the decision so rendered, assigning, as errors, the refusal of the Court to give the two rulings above requested, said assignment of errors being set forth in said transcript of the record.

II.

Section 5278 of the Revised Statutes of the United States reads in part as follows:

"Whenever the executive authority of any state or territory demands any person as a fugitive from justice of the executive authority of any state or territory to which any such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. . . ."

Section II of the Revised Laws of the Commonwealth of Massachusetts provides as follows:

"The governor, in any case which is authorized by the Constitution and laws of the United States, may, upon demand, deliver to the executive of any other state or territory, any person charged therein with treason, felony or other crime, or may, upon application, appoint an agent to demand of the executive authority of any other state or territory any such offender fleeing from the justice of this Commonwealth. Such demand or application shall be accompanied by sworn evidence that the person charged is a fugitive from justice, and by a duly attested copy of an indictment or complaint made before a Court or magistrate authorized to receive it. Such complaint shall be accompanied by affidavits to the facts constituting the crime charged by persons who have actual knowledge thereof, and by such further evidence as the governor may require."

The question to be considered is whether under a proper construction of those statutes the petitioner was, upon the evidence presented, as a matter of law a fugitive from justice within the meaning of those statutes.

The two requests for rulings will be considered together.

If we look at the affidavits of the Commonwealth which relate to this subject matter, we find that the only evidence tending to

show that the petitioner was liable to arrest under the statute mentioned is found in the affidavits of Richard Emory and Charles F. Coaney.

In the affidavit of Richard Emory it is alleged that the petitioner, Arthur E. Appleyard, was, on May 18, 1904, the date when the alleged crime is said to have been committed by the petitioner, in the city of Buffalo, and that he has since departed therefrom; further, that the deponent is informed and believes that said Appleyard is now (February 3, 1905) in the state of Massachusetts, and that the deponent believes that he, said Appleyard, departed from New York on or about December 5, 1904.

In the affidavit of Charles F. Coaney it is alleged that the petitioner, Arthur E. Appleyard, was, on May 18, 1904, in the city of Buffalo, and has since departed therefrom, and that the deponent believes that said Appleyard is now (February 3, 1905) in the state of Massachusetts, and that he believes that said Appleyard departed from said state of New York on or about December 5, 1904.

In the affidavit of James Holmes it is alleged upon information and belief that said Appleyard was, on May 18, 1904, in the city of Buffalo, and that on this date (February 3, 1905) he is in the state of Massachusetts.

In the affidavit of Edward E. Coatsworth it is alleged on information and belief that said Arthur E. Appleyard is now (February 4, 1905) in the state of Massachusetts.

In the affidavit of James T. Twitty, given on February 3, 1905, it is alleged that said Arthur E. Appleyard, on May 18, 1904, at Buffalo, hired of the deponent a horse.

In the affidavit of the same witness given on May 16, 1905, it is stated that he has no knowledge as to whether said Appleyard was or was not in Buffalo on May 18, 1904.

The foregoing is all the evidence that the Commonwealth produces in support of the contention that the petitioner, Arthur E. Appleyard, was, at the time of the application for a warrant for his arrest and for his extradition, a fugitive from justice, and amounts to this, — that on May 18, 1904, he committed the crime alleged in Buffalo, that he departed from Buffalo on or about December 5,

1904, and that he was, on or about February 3, 1905, in the state of Massachusetts.

Assuming these allegations to be facts, and all the facts, has the Commonwealth shown that the petitioner was a fugitive from justice within the meaning of the statute?

As the request for ruling made to the justice of the Circuit Court was that upon all the evidence the petitioner was not a fugitive from justice, we may fairly take as true, and as a part of the evidence in said case, such affidavits of the petitioner as were introduced by him, and were not contradicted by or in contradiction of any of the affidavits introduced in support of the application for the warrant.

These affidavits showed that the petitioner, Arthur E. Appleyard, openly and publicly, after the date of the alleged crime, in the prosecution of his ordinary business, visited the city of Buffalo on May 20, 21, 23, 26, 27, 31, June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 20, 21, 22, 23, 24, July 5, 6, 7, 8, 10 and December 4 and 5, 1904; that he openly and publicly visited the city of New York on his business on August 16, August 17, September 12, October 7, 11, 12, 19 and 29, November 10, 17, 18, 22, 26, 27, 29 and 30, and December 4, 1904; that he openly and publicly visited on his business in the city of Albany in the state of New York on November 3, 1904; that on other dates he openly and publicly in the prosecution of his business passed through the state of New York on his way to other states; that after May 18, 1904, he was in Buffalo having business relations with the bank whose funds are alleged to have been stolen.

Said affidavits further showed that on the date of his last visit to the city of Buffalo, the petitioner did not know, and had not been informed, that he had committed any crime, and that in leaving the state of New York for his home in Massachusetts he did so in the usual course of his business, and not to flee from justice or to escape prosecution.

Unless, then, it can be laid down as a general proposition that under the statute one is a fugitive from justice whenever he is in the state in which the crime is alleged to have been committed, at the date when it is alleged to have been committed, and that he is on

the date of the application for a warrant for his arrest and extradition in the state within which his arrest is asked, regardless of all other circumstances, there is nothing in this case which would warrant the extradition, or the refusal of the Court to give the ruling asked for, that upon all the evidence the petitioner was not a fugitive from justice within the meaning of Section 5278 of the Revised Statutes of the United States.

It is conceded that there are some decisions which seem to adopt that broad construction of the statute, namely, — that of Kingsbury's case, reported in 106 Mass. 227, decided in 1870, and that of Roberts *v.* Reilly, reported in 116 U. S. 80, decided in 1885.

It was, however, decided in the case of Hyatt *v.* New York, 188 U. S. 691, a decision rendered in 1903, that where the allegations were of an indictment for a crime alleged to have been committed on a day certain within the state making the requisition, and it appeared that the person whose arrest was sought was not in the state on the date when the crime was alleged to have been committed, but was in that state on a subsequent day in the usual course of his business, and thereafter left the state, there was no such flight from justice as would warrant the arrest.

The case of Munsey *v.* Clough, 196 U. S. 364, in referring to the last case, speaks of it as a case where there is a constructive presence in the state at the time of the alleged crime, though not an actual presence.

As there was an actual indictment in the case of Hyatt *v.* New York, above cited, and as it was not the provision of the Court in the habeas corpus proceeding to determine whether a crime had or had not been committed before the petitioner for habeas corpus left the state, but to determine whether the petitioner was a fugitive from justice, it would not seem as though the mere fact of being in and leaving the state on or after the date of the alleged crime could or should be the controlling element in determining whether one is a fugitive from justice or not. A construction of the statute which says that if one is actually in the state on the date of the alleged crime, and the next day out of the state without any knowledge that he has committed any crime, he is a fugitive from justice, but that if he is not actually in the state on the date

when the crime is alleged to have been committed, though he may have been constructively in the state (there being an actual indictment), and on subsequent days goes into the state and then departs, he is not a fugitive from justice, regardless of his knowledge of whether he has or has not committed a crime, and regardless of the element of whether when he did finally leave, he left to escape prosecution, seems to be a narrow and unwarranted construction of the word " fled " in the statute.

It is perfectly apparent from the record that as a fact Arthur E. Appleyard did not flee from the state of New York, and that he was not, in fact, a fugitive from justice, if there be given to the word " flee " the ordinarily accepted and natural meaning, the only meaning ever given to it in any other connection than the one in question. He was continually in New York and Buffalo for a long time after the alleged offence, going about openly, having dealings with the very bank alleged to have been defrauded, and returning in the ordinary course of his business to Massachusetts.

The interpretation put upon the language in the case, United States *v.* O'Brien, 3 Dillon, 381, would seem to be based upon sound reasoning, namely, that a fleeing from justice means to leave one's home or residence, or one's place of abode, with intent to avoid detention or punishment for some public offence against the United States.

The various dictionaries have defined the word " flee " as meaning " to shun," " to run away from," " to attempt to escape."

We may illustrate further by quoting from the language of a certain governor as reported in 24 Am. Jur. 226, where he says:

> " Suppose a person commits an offence in this state where he continues subsequently to reside for several years, engaged in his usual avocation, the offence being a matter of public notoriety, and no one attempting to disturb him by prosecution. He then removes to the state of Georgia with his family and property, going away not clandestinely, but openly in the daytime. He continues his residence in Georgia for several years, pursuing his regular business there and demeaning himself in all respects as a good citizen. Can this man properly be considered as a fugitive from justice? "

We quote again from Penn. Law J., Vol. 6, p. 418:

"The Act of Congress contemplates the demand of a person as a 'fugitive from justice' addressed to the executive into whose jurisdiction he 'shall have fled.' A fugitive is 'one who takes shelter under another power from punishment'; to flee is 'to run from danger.' Both these expressions include a sense of danger, and a desire to escape or be screened from it. They are not satisfied by the idea of a departure from a place of temporary sojourn for one's ordinary and permanent residence.

"It may be said of many that they have returned home from New York into Pennsylvania, without inferring that they are fugitives, even though it be added that while in New York they violated some of the statutes of that state."

The word implies some conscious act on the part of the alleged fugitive, and while that is a state of mind not easily proved, the acts may conclusively negative the existence of any such intent.

In 1900 the Supreme Court of South Dakota in the case, *In Re* Tod, 12 So. Dakota, 386–395, held that the mere fact that one who is alleged to have committed a crime is, at the time when extradition is asked, not in the state in which the offence is alleged to have been committed, is not necessarily a fugitive from justice, especially if he left the state with the consent or knowledge, actual or implied, of the parties alleged to have been defrauded. In the case at bar it is apparent that the petitioner did leave the state of New York with the knowledge and implied, if not actual, assent of the party alleged to have been defrauded.

BENJAMIN S. MINOR,
Attorney for Petitioner.

FRED H. WILLIAMS,
Counsel for Petitioner.

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Supreme Court of the United States.

No. 115. OCTOBER TERM, 1906.

ARTHUR E. APPLEYARD, APPELLANT,

v.

THE COMMONWEALTH OF MASSACHUSETTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES.

BRIEF FOR THE APPELLEE—THE COMMONWEALTH OF MASSACHUSETTS.

Supreme Court of the United States.

No. 115. October Term, 1906.

ARTHUR E. APPLEYARD, Appellant,

v.

THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR THE COMMONWEALTH OF MASSACHUSETTS, APPELLEE.

Statement of the Case.

This case arises upon a demand by the Executive of the State of New York upon the Executive of the Commonwealth of Massachusetts for the surrender of Arthur E. Appleyard, the appellant, an alleged fugitive from justice, charged with the commission of acts which are alleged to constitute a crime within the jurisdiction of the State of New York. An indictment against the appellant was found by the grand jury of the county of Erie in the State of New York, setting forth that, on the eighteenth day of May, 1904, the appellant obtained from The German Bank of Buffalo, through one Emory, its president, who was fully authorized thereto by the by-laws of the bank, the sum of $49,250, giving in return for such loan his note, dated May 14, 1904, for $50,000, together with seventy bonds of the Ohio Union Traction Company as collateral, representing to the said Emory that such corporation owned and controlled certain other railroad corporations organized under the laws of the State of Ohio, and that the bonds of the Ohio Union Traction Company were each worth $750, and were full security for the payment of the note above referred to. It is further alleged

in the indictment that The German Bank, and Richard Emory, its president, believing the false pretences and representations made by Arthur E. Appleyard, and being deceived thereby, were induced, by reason of such false pretences and representations, to deliver, and did deliver, to the said Appleyard $49,250 in money of the property of The German Bank, and that Appleyard feloniously received and obtained that amount with the intent feloniously to deprive and defraud the said The German Bank of its property, and of the use and benefit thereof, and to appropriate such property to his own use; and that the said Appleyard did then and there feloniously appropriate to his own use said $49,250 of the property, moneys, valuable things, goods and chattels, personal property and effects of the said The German Bank, said body corporate, with intent to feloniously deprive and divert the said The German Bank of its property and of the use and benefit thereof. A second count in the indictment charges Appleyard with feloniously stealing, taking and carrying away $49,250 in money, of a kind, number and denomination unknown to the grand jury, contrary to the form of the statute in such case made and provided, and against the peace of the people of the State of New York and their dignity (Record, p. 27).

Upon request of counsel for the alleged fugitive, and by direction of His Excellency the Governor of the Commonwealth of Massachusetts, full hearing was had before the Attorney-General upon certain questions of law and fact, and certain evidence in the form of affidavits was presented tending to show, first, that the alleged fugitive was not within the State of New York upon the date of the offense set forth in the indictment accompanying the requisition of the Executive of the State of New York; second, that no crime had been committed within the jurisdiction of the State of New York; and third, that the alleged fugitive left the State of New York before he was aware that he had committed or could be charged with any offence against the laws of that State.

Upon report of the Attorney-General (Record, p. 5), as required under the provisions of the Revised Laws of Massachusetts, chapter 217, section 12, advising the Governor that there appeared to be no reason why the demand of the Executive of the State of New York should not be honored, His Excellency the Governor, acting in accordance with such advice, issued a warrant of extradition directed to Frederick A. Rhoades, a duly appointed officer of the Massa-

chusetts District Police (Record, p. 2). Upon the service of such warrant, the appellant applied for a writ of *habeas corpus* in the Supreme Judicial Court for the Commonwealth of Massachusetts, and upon hearing before a single justice of that court, offered to introduce the same evidence which had been previously presented to the Attorney General, for substantially the same purposes. The court, however, refused to receive the evidence, and remanded the prisoner to the custody of the officer duly appointed to receive him.

On April 18, 1905, the appellant applied to the Circuit Court of the United States for a writ of *habeas corpus* (Record, p. 1). To this writ Frederick A. Rhoades, district police officer of Massachusetts, respondent, made a return, which was filed on April 22, 1905, substantially setting forth the facts already stated, and justifying, upon the ground that the petitioner was lawfully in his custody by virtue of the warrant issued by the Governor of the Commonwealth of Massachusetts.

Upon the same date the case was heard upon the return on the writ of *habeas corpus* and the petitioner's offer of proof and requests for rulings and findings. The offer of proof (Record, p. 36) made by the appellant was as follows: —

1. Offers to introduce the testimony of Appleyard, Jenks, Sage, Van Vorst, Reed, Locke, McCormick, Sweet, Carter, Kingsbury, Twitty, Walker and Mrs. Appleyard, constituting all the evidence submitted by the petitioner to His Excellency the Governor, for the purpose of showing that the warrant for extradition ought not to have issued, and that Mr. Appleyard is not a fugitive from justice within the meaning of section 2, Article 4 of the Constitution of the United States, and of section 5278 of the Revised Statutes of the United States.

2. Offers to introduce the testimony of Mr. Appleyard and Mr. Jenks regarding what the defendant claims to have been the actual transaction connected with the obtaining of $50,000 from The German Bank of Buffalo, on which the indictment in New York was based, for the purpose of showing —

(*a*) That what was done did not constitute a crime under the laws of the State of New York.

(*b*) That no crime was committed in the State of New York.

(*c*) That Mr. Appleyard had no knowledge of having done anything which was a crime under the laws of the State of New York.

(*d*) That under all the circumstances there was no conscious fleeing from justice on his part.

3. Offers to introduce the testimony of Appleyard, Jenks, Sage, Van Vorst, Reed, Locke and Mrs. Appleyard regarding the presence of Mr. Appleyard in the State of New York between May 18, 1904, and December 5, 1904, his manner of travelling about, registering at hotels, general conduct, etc., for the purpose of showing that he was not a fugitive from justice, and that there was no conscious flight from justice by him.

4. Offers to introduce the testimony of Appleyard, Jenks, Kingsbury, Twitty and Walker, for the purpose —

(*a*) Of contradicting the testimony of Emory, Coaney and Twitty, presented in connection with the application for the warrant for extradition.

(*b*) Of showing that Mr. Appleyard was not in the State of New York on May 18, 1904.

(*c*) Of showing that he left New York with the consent of the person alleged to have been defrauded.

These affidavits were in brief as follows: the affidavit of Appleyard set forth his occupation and business, which is that of a broker with an office in the city of Boston and other offices in Philadelphia and Cincinnati; that he had been engaged in the construction of gas and electric plants and street railways in which he was a controlling owner, and a detailed account of the transactions which are alleged in the indictment before quoted to constitute the crime with which Appleyard is charged in the State of New York, tending to show that such transactions were actually entered upon on May 14, 1904, Appleyard then being in his office at Boston, and were completed on May 17, 1904, and that during the course of such transactions Appleyard was not within the State of New York. Certain specific dates are alleged subsequent to May 18, 1904, up to and including December 5 of the same year upon which he visited the State of New York in connection with his business, and it is alleged that the visits so made were made openly and without attempt at concealment (Record, p. 37).

The affidavit of Herbert M. Jenks states that he was the representative of Appleyard in Buffalo in the matter of the purchase of The German Bank and in his personal business, and that in connection with the latter he delivered the collateral before referred to to The German Bank, such delivery being on May 17, 1904. Annexed to this affidavit are certain records of the Ohio Union Traction Company, tending to show that Emory, president of The German

Bank, was familiar with the status and property of that corporation until a date later than that upon which it is charged the alleged misrepresentations regarding such corporation were made to him (Record, p. 46).

The affidavits of Sage, Van Vorst, Reed, Locke, McCormick, Sweet, Carter and Mrs. Appleyard, referred to in the offer of proof, all tended to show that on certain specific dates subsequent to the eighteenth day of May, and prior to the sixth day of December, 1904, the appellant was openly present within the jurisdiction of the State of New York (Record, pp. 57–61, inclusive, 63, 64, 65).

The testimony of Twitty was in the form of an affidavit tending to contradict or explain an affidavit made by the same person and annexed to the demand of the Executive of the State of New York for the extradition of the appellant (Record, p. 25), and sets forth that Appleyard, Emory and one Coaney were in the habit of hiring horses of the defendant for riding; that, in so ordering, they were accustomed to use each other's names, and that this might have been the case upon the date referred to in the former affidavit by deponent; and that deponent has no personal knowledge whether or not Appleyard was present upon that particular occasion (Record, p. 61).

The testimony of Joseph A. Kingsbury, a director of the Camden National Bank at Camden, New Jersey, was in the form of an affidavit stating that Charles F. Coaney, whose affidavit was annexed to the demand of the Executive of the State of New York (Record, p. 21), and tended to show that the person demanded was in fact a fugitive from justice, was also a director in the same bank, and on May 18, 1904, between the hours of 11 and 12 o'clock, was present with the said Coaney at a meeting of the board of directors of such bank.

The affidavit of Guy M. Walker (Record, p. 67), referred to in the offer of proof, tended to throw doubt upon the good faith of the affidavit of Emory, annexed to the demand of the Executive of the State of New York (Record, p. 18), by setting forth a statement made by Emory to the deponent to the effect that he had been promised immunity from prosecution in connection with the failure of The German Bank if he would make a full and detailed disclosure of the facts in connection therewith, and further stating that such disclosure was unsatisfactory to the prosecuting authorities for the reason that it failed to incriminate anybody.

The appellant also made the following requests for rulings of law and findings of fact: —

Requests for Rulings.

1. On all the evidence it does not appear that Mr. Appleyard is a fugitive from justice within the meaning of section 2, Article 4 of the Constitution of the United States, and of section 5278 of the Revised Statutes of the United States, and he should therefore be discharged from custody.

2. Unless it appears positively by a preponderance of the evidence that Mr. Appleyard consciously fled from justice when he left the State of New York, he should be discharged from custody.

3. In this proceeding the finding by the Governor as a fact that Mr. Appleyard is a fugitive from justice is not conclusve.

Requests for Findings of Fact.

1. That the acts of Mr. Appleyard in connection with obtaining $50,000 from The German Bank of Buffalo, on which the indictment was based, do not constitute a crime under the laws of the State of New York.

2. That no crime was committed by Mr. Appleyard in the State of New York.

3. That Mr. Appleyard was not in the State of New York on May 18, 1904, the date of the alleged crime.

The court, by a decree dated April 22, 1905, refused the appellant's first and second requests for rulings of law and all the appellant's requests for findings of fact, and granted the third request for a ruling of law (Record, p. 68).

The petitioner then appealed from the decision rendered to this court, and filed the following assignment of errors: —

First. — The court erred in refusing to rule that upon all the evidence the petitioner was not a fugitive from justice within the meaning of section 2 of Article 4 of the Constitution of the United States, and of section 5278 of the Revised Statutes of the United States, and should therefore be discharged from custody.

Second. — The court erred in refusing to rule that unless it appeared positively, by a preponderance of the evidence, that the petitioner consciously fled from justice when he left the State of New York, he should be discharged from custody (Record, p. 69).

The assignment of errors contains no reference to the appellant's offer of proof, and it does not appear, either from the decree of the court or from the record generally, what disposition was made of it; it appears inferentially from the decree, however, that the evidence which was the subject of the offer, so far as it was material to the question at issue, was admitted and was considered by the court.

There are, therefore, two questions for the consideration of this court: first, whether or not upon all the evidence as above set forth the court erred in refusing to rule as matter of law that the petitioner was not a fugitive from justice; and second, whether or not the court erred in refusing to rule that it was material and necessary to show by preponderance of evidence that the petitioner consciously fled from the justice of the State of New York.

Statutes.

Constitution of the United States, Article 4, section 2: —

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Revised Statutes of the United States, section 5278: —

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such

authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory.

Argument.

Assignment of Errors.

The legal sufficiency of the papers accompanying the demand of the Executive of the State of New York, and the regularity of the proceedings before the Executive of the Commonwealth of Massachusetts, are not questioned, and there is no dispute with respect to the identity of the person sought to be extradited. The sole question raised by the appellant's first assignment of error is, therefore, whether or not the court below was required as matter of law to find upon all the evidence before it that the appellant was not a fugitive from justice within the meaning of section 2 of Article 4 of the Constitution of the United States and of section 5278 of the Revised Statutes of the United States.

Whether or not Appleyard was a fugitive from justice within the meaning of the statute above cited and of the Constitution of the United States is a pure question of fact. In the leading case of Roberts *v.* Reilly, 116 U. S. 80, the court, through Mr. Justice Matthews, says, at p. 95: —

> The act of Congress, Revised Statutes, section 5278, makes it the duty of the executive authority of the State to which such person has fled to cause the arrest of the alleged fugitive from justice, whenever the executive authority of any State demands such person as a fugitive from justice, and produces a copy of an indictment found, or affidavit made, before a magistrate of any State, charging the person demanded with having committed a crime therein, certified as authentic by the governor or chief magistrate of the State from whence the person so charged has fled.
>
> It must appear, therefore, to the governor of the State to whom such a demand is presented, before he can lawfully comply with it, first, that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or an affidavit, certified as authentic by the governor of the

State making the demand; and second, that the person demanded is a fugitive from the justice of the State the executive authority of which makes the demand.

The first of these prerequisites is a question of law, and is always oper upon the face of the papers to judicial inquiry, on an application for a discharge under a writ of *habeas corpus*. The second is a question of fact, which the governor of the State upon whom the demand is made must decide, upon such evidence as he may deem satisfactory. How far his decision may be reviewed judicially in proceedings in *habeas corpus*, or whether it is not conclusive, are questions not settled by harmonious judicial decisions, nor by any authoritative judgment of this court. It is conceded that the determination of the fact by the executive of the State in issuing his warrant of arrest, upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof. *Ex parte* Reggel, 114 U. S. 642.

In *Ex parte* Reggel, 114 U. S. 642, 651, the court uses the following language: —

The only question remaining to be considered relates to the alleged want of competent evidence before the Governor of Utah, at the time he issued the warrant of arrest, to prove that the appellant was a fugitive from the justice of Pennsylvania. Undoubtedly, the act of Congress did not impose upon the executive authority of the Territory the duty of surrendering the appellant, unless it was made to appear, in some proper way, that he was a fugitive from justice. In other words, the appellant was entitled, under the act of Congress, to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal process. The statute, it is to be observed, does not prescribe the character of such proof; but that the executive authority of the Territory was not required, by the act of Congress, to cause the arrest of appellant, and his delivery to the agent appointed by the Governor of Pennsylvania, without proof of the fact that he was a fugitive from justice, is, in our judgment, clear from the language of that act. Any other interpretation would lead to the conclusion that the mere requisition by the Executive of the demanding State, accompanied by the copy of an indictment, or an affidavit before a magistrate, certified by him to be authentic, charging the accused with crime committed within her limits, imposes upon the Executive of

the State or Territory where the accused is found the duty of surrendering him, although he may be satisfied, from incontestable proof, that the accused had, in fact, never been in the demanding State, and, therefore, could not be said to have fled from its justice. Upon the Executive of the State in which the accused is found rests the responsibility of determining, in some legal mode, whether he is a fugitive from the justice of the demanding State. He does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him, by competent proof, that the accused is, in fact, a fugitive from the justice of the demanding State."

See also Hyatt *v.* Corkran, 188 U. S. 691, 709.

Since this assignment of error raises only an issue of fact, this court will not revise the findings of fact of the trial court, if there is evidence adequate to justify them.

Zeckendorf *v.* Johnson, 123 U. S. 617.
Hewitt *v.* Campbell, 109 U. S. 103.
Jeffreys *v.* Mutual Life Insurance Co., 110 U. S. 305.
Central Pacific Railroad Co. *v.* California, 162 U. S. 91.

That there was evidence to justify the court in refusing to find that Appleyard was not a fugitive from justice, as requested by appellant, clearly appears from a consideration of the testimony in the form of affidavits accompanying the demand of the Executive of the State of New York and submitted to the Executive of the Commonwealth of Massachusetts, which, together with the demand itself, were before the United States Circuit Court.

A "fugitive from justice" has been defined as being one who, "having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence, . . . has left its jurisdiction and is found within the territory of another" (Roberts *v.* Reilly, *supra;* Kingsbury's Case, 106 Mass. 223); and the evidence to justify the finding either of the Executive of the Commonwealth of Massachusetts or of the Circuit Court of the United States must, therefore, establish, first, that the person charged was within the State whose executive makes demand for extradition when the crime was committed; and second, that since the commission of the crime he has left the jurisdiction of that State and is found within the State upon which the demand is made.

It appears from the affidavit of Richard Emory (Record, p. 18) that on the eighteenth day of May, the date of the alleged offense against the laws of the State of New York, as set forth in the indictment accompanying the demand of the Executive of the State of New York, Appleyard presented to the deponent a note dated May 14, 1904, for the sum of $50,000, and tendered certain bonds as collateral security, at the same time making the alleged false and fraudulent representations, which, together with the acts set forth, constituted the offense alleged in the indictment. The affidavit further states that "deponent knows of his own knowledge, by reason of the premises aforesaid, that the defendant, Arthur E. Appleyard, was in the city of Buffalo on the eighteenth day of May, 1904, and that he has since departed therefrom, and deponent is informed and verily believes that said defendant is now in the State of Massachusetts, and he knows that his residence and business address is No. 50 State Street, Boston, Massachusetts, and his home address, 1674 Beacon Street, Brookline, Massachusetts; and that deponent believes the said defendant, Arthur E. Appleyard, departed from this State on or about the fifth day of December, 1904."

A second affidavit, by one Charles F. Coaney (Record, p. 21), after alleging that the deponent had served as secretary to Appleyard and also as secretary of the several railroad corporations, the franchises of which were alleged to have been transferred to the Ohio Union Traction Company, and that on the eighteenth day of May, 1904, none of such corporations were controlled by the Ohio Union Traction Company, or have ever been transferred to said company, proceeds as follows: "That he knows of his own knowledge that the said defendant, Arthur E. Appleyard, was in the city of Buffalo and State of New York on the eighteenth day of May, 1904, and has since departed therefrom."

James Holmes, a detective sergeant of the city of Buffalo, made affidavit (Record, p. 22) on information and belief "that the defendant was in the city of Buffalo about the time the crime is alleged to have been committed, . . . and that the defendant is now in the city of Boston, State of Massachusetts."

One James T. Twitty makes affidavit (Record, p. 25) that he is a resident of Buffalo and conducts a riding academy in that city, and has been so engaged for a period of five years; that he is personally acquainted with Appleyard, who upon several occasions hired and

rented of him saddle horses; and that from his books and records it appears that Appleyard, on May 18, 1904, rented from him a saddle horse, which was used for about an hour and duly paid for.

All of these affidavits accompany the demand of the Executive of the State of New York, and were properly before the court.

The evidence of the presence of Appleyard in the city of Buffalo and State of New York on the date alleged in the indictment is uncontradicted. The appellant himself (Record, p. 37) submitted a lengthy affidavit describing the nature of the acts done by him which are alleged to constitute a crime, but nowhere does he deny that he was in the city of Buffalo at the time of the offense charged in the indictment; nor, with the exception of a second affidavit by Twitty (Record, p. 61), tending to discredit the statements previously made by him under oath and annexed to the demand of the Executive of the State of New York, is there any evidence, either direct or inferential, to contradict the positive testimony of Emory and Coaney that on the eighteenth day of May, 1904, Appleyard was within the State of New York.

Upon this uncontroverted evidence the court below was not only justified but required to refuse to grant the ruling of law requested by the appellant, that Appleyard was not a fugitive from justice.

Appleyard's second assignment of error is based upon failure of the trial court to rule that "unless it appears positively by a preponderance of the evidence that the petitioner consciously fled from justice when he left the State of New York, he should be discharged from custody." In other words, the appellant contends that conscious guilt, or at least an intent to avoid the consequences of a known crime or a certain prosecution, is an element which is essential to constitute a flight from justice within the meaning of the Constitution and statutes of the United States.

The doctrine so contended for has never received the sanction of this court. Indeed, in Roberts *v.* Reilly (116 U. S. 80, 97) it is expressly negatived by the language of Mr. Justice Matthews, who delivered the opinion of the court: —

> To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have

been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by its laws constitutes a crime, when he sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another.

So in the case of one White, reported in 55 Fed. Rep. 54, the court, at p. 57, say: —

The appellant contends that the affidavits produced are insufficient; that he was not a fugitive from justice, within the meaning of the section; and that the court below erred in refusing to receive the evidence offered by him to overcome the presumption that he was such fugitive, arising from the issuing of the warrant of removal by the Executive of the State to whom the demand was presented. The criminal complaint sworn to by Walter R. Stoll is in all essentials an affidavit, and charges the petitioner with stealing shares of stock and corporation bonds of sufficient value to constitute the offense of grand larceny, which offense the affidavit of Breckons shows to be a crime under the laws of Wyoming. The affidavit of Breckons also shows that White left Wyoming five days after the day on which the offense is alleged in Stoll's affidavit to have been committed, and came to New York. Such a showing is quite sufficient to warrant the conclusion that petitioner was a fugitive from justice from the State of Wyoming. The evidence as to the circumstances of his departure from Wyoming, offered by his counsel, was irrelevant and immaterial. The offer was to prove that White came from Wyoming to New York on legitimate business at the suggestion of his wife, from whom it is alleged he stole the stocks and bonds, and of Stoll, who swore to the complaint; that he came to put his son at school in Poughkeepsie, and to organize a coal company as agent for his wife. Proof of these facts, however, would in no respect alter the situation. A person is a fugitive from justice when, having committed a crime within a State, he withdraws himself from the jurisdiction of its courts without waiting to abide the consequences of such act, and it matters not that some other cause than a desire "to flee" induced such withdrawal. As stated by the Supreme Court (Roberts *v.* Reilly, 116 U. S. 80, 6 Sup. Ct. Rep. 291), it is not necessary that the party charged should have left the State "for the purpose of avoiding a prosecution anticipated or begun, but simply that, having within a State committed that which by its laws constituted a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction, and is found within the territory of another."

In re Bloch, 87 Fed. Rep. 981, contains an equally explicit statement of the law upon this point, together with an interesting and exhaustive collection of both Federal and State authorities.

The case of Streep *v.* United States, 160 U. S. 128, 133, is not in conflict with the decisions already cited, for while that case holds that under section 1045 of the Revised Statutes of the United States, providing that "nothing in the two preceding sections" (which established certain limitations of time for the presentation of charges of certain criminal offenses) "shall extend to any person fleeing from justice," it is sufficient if there be "a flight with the intention of avoiding being prosecuted," it is to be observed that the court was not there required to pass upon the precise point now under consideration, and that in the course of the opinion it is declared by Mr. Justice Gray that section 1045 must receive the same construction as that given by the decision in Roberts *v.* Reilly, *supra*, to section 5278, which is thus expressly affirmed. Moreover, it would seem that the requirements of section 1045 would be fully satisfied by a "flight or *voluntary withdrawal*" from the jurisdiction.

United States *v.* Hewicker, 79 Fed. Rep. 59.

For the Appellee, the Commonwealth of Massachusetts,

DANA MALONE,
Attorney-General.

FREDERIC B. GREENHALGE,
Assistant Attorney-General.

Supreme Court of the United States.

No. 115.—October Term, 1906.

Arthur E. Appleyard, Appellant, vs. Commonwealth of Massachusetts. } Appeal from the Circuit Court of the United States for the District of Massachusetts.

[December 3d 1906.]

Mr. Justice Harlan delivered the opinion of the Court.

The appellant was indicted in the Supreme Court of New York, county of Erie, for the crime of grand larceny, first degree, alleged to have been committed in that county on the 18th day of May, 1904.

Upon that indictment a warrant of arrest was issued but the accused was not arrested, for the reason that he was not found within the State.

Then the District Attorney of Erie County applied to the Governor of New York for a requisition upon the Governor of Massachusetts for Appleyard as a fugitive from justice. The application was based upon the above indictment and numerous accompanying affidavits, stating, among other things, that the accused was then in Massachuettss. A requisition was accordingly made upon the Governor of that Commonwealth for the apprehension of Appleyard and his delivery to a named agent of New York, who was authorized to receive and convey him to the latter State, to be there dealt with according to law. With that requisition went properly authenticated copies of all the papers which had been submitted to the Governor of New York by the District Attorney of Erie County.

The Governor of Massachusetts received the requisition and pursuant to the statutes of that Commonwealth referred it to the Attorney General for examination and report. Giving the accused full opportunity to be heard and to introduce evidence, of which he availed himself, that officer examined the case and reported that the requisition was in regular and proper form and that there was no sufficient reason why it should not be honored. The Governor thereupon issued a warrant for the arrest of Appleyard and his delivery to the agent of New York to be taken to that State, the officer who should execute the warrant being required to give the accused such opportunity to sue out a writ of *habeas corpus* as was prescribed by the laws of Massachusetts in such cases. Appleyard having been arrested applied for a writ of *habeas corpus* to the Supreme Judicial Court of Massachusetts. This fact is stated in the return of the officer holding the accused and is not denied. That court, after

hearing an argument, denied the application and remanded the petitioner to the custody of the agent of New York to be held in accordance with the warrant issued by the Governor of Massachusetts.

The accused then applied to the Circuit Court of the United States for a writ of *habeas corpus*, alleging that the warrant of the Governor of Massachusetts and the order for his delivery to the agent of New York were issued without authority of law and contrary to the Constitution and laws as well of the United States as of Massachusetts, and "especially contrary to section 2, article 4, of the Constitution of the United States and of section 5278 of the Revised Statutes of the United States, in that your petitioner is not a fugitive from justice." The writ was issued and a return was made of the above facts.

At the hearing in the Circuit Court the accused requested a ruling that on the evidence it did not appear that, within the meaning of the Constitution and laws of the United States, he was a fugitive from justice, and, also, that he should be discharged from custody unless it appeared positively, by a preponderance of proof, that he "consciously fled from justice when he left the State of New York." Those requests were denied. But the court granted a request that the finding by the Governor of Massachusetts as a fact that the accused was a fugitive from justice was not conclusive. The court refused to find, as facts, that the acts of Appleyard did not constitute a crime under the laws of New York; that no crime was committed by him in that State; and that Appleyard was not in New York on May 18th 1904, the date of the alleged crime. It consequently discharged the writ of *habeas corpus*. From that order the present appeal was prosecuted.

It can not be said that the appellant has not had ample opportunity to test the question whether his detention was in violation of the Constitution and laws of the United States. He has had three hearings upon that question; first, before the executive authorities of Massachusetts, then before the Supreme Judicial Court of that Commonwealth, and finally before the Circuit Court of the United States. Upon each occasion he insisted that, within the meaning of the Constitution and laws of the United States, he could not be regarded as a fugitive from justice. The decision at each hearing was adverse to that contention and, unless this court reverses the judgment of the Circuit Court, he must stand his trial upon the charge that he committed a crime against the laws of New York. In view of the history of this case from the time of the demand upon the Governor of Massachusetts for the surrender of the appellant, this court should hesitate, by disturbing the ruling below, to further delay the administration by New York of its criminal laws through its own judicial tribunals. Regularly, the accused should have prosecuted a writ of error to the Supreme Judicial

Court of Massachusetts before invoking the jurisdiction of the Circuit Court of the United States upon *habeas corpus*. *Ex parte Royall*, 117 *U. S.* 241, 251–253; *Markuson* v. *Boucher*, 175 *U. S.* 184; *Minnesota* v. *Brundage*, 180 *U. S.* 499, 502; *Reid* v. *Jones*, 187 *U. S.* 153. But in view of the long time which has elapsed since the Governor of New York made his requisition for the surrender of the accused, and as the case is one which the public interests demand should be speedily determined, we think the ends of justice will be promoted if we proceed to a final judgment on this appeal.

Upon a careful scrutiny of the record we discover no ground for the assertion that the detention of the appellant is in violation of the Constitution or laws of the United States. The crime with which he is charged is alleged in the indictment to have been committed at Buffalo, New York, on May 18th 1904. It is, we think, abundantly established by the evidence that he was personally present in that city on that day and that thereafter he left New York, although there was some evidence to the effect that on the particular day named he was not in the State. In his own affidavit, submitted and accepted as evidence, the accused specified several days when he was in Buffalo, prior to and subsequent to May 18th 1904, but, as stated by the Attorney General of Massachusetts in his report to the Governor of that Commonwealth, there was in that affidavit no statement directly denying that he was in New York at the time and place indicated in the indictment.

But the appellant contended below, as he does here, that he had no *belief* when leaving New York at any time that he had violated its criminal laws, and therefore, within the meaning of the Constitution and laws of the United States, he could not be deemed a fugitive from its justice. This contention cannot be sustained; indeed, it could not be sustained without materially impairing the efficacy of the constitutional and statutory provisions relating to fugitives from justice. An alleged fugitive may believe that he has not committed any crime against the laws of the State in which he is indicted, and yet, according to the laws of such State, as administered by its judical tribunals, he may have done so, and his belief or want of belief may be without foundation in law. It is the province of the courts of New York to declare what its laws are, and to determine whether particular acts on the part of an alleged offender constitute a crime under such laws. The constitutional provision that a person charged with crime against the laws of a State and who flees from its justice must be delivered up on proper demand, is sufficiently comprehensive to embrace any offense, whatever its nature, which the State, consistently with the Constitution and laws of the United States, may have made a crime against its laws. *Kentucky* v. *Dennison*, 24 *How*, 66, 69; *Ex parte Reggel*, 114 *U. S.* 642, 650. So that the simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he

consciously fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding State. A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime leaves the State—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, and if found in another State must be delivered up by the Governor of such State to the State whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the Governor of the State from which the accused departed. Such is the command of the Supreme law of the land, which may not be disregarded by any State. The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several States—an object of the first concern to the people of the entire country, and which each State is bound, in fidelity to the Constitution, to recognize. A faithful, vigorous enforcement of that stipulation is vital to the harmony and welfare of the States. And while a State should take care, within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State.

In *Roberts* v. *Reilly*, 116 *U. S.* 80, 95, 97, this court said that the act of Congress, section 5278 of the Revised Statutes, made it the duty of the executive authority of the State in which is found a person charged with crime against the laws of another State, and who has fled from its justice "to cause the arrest of the alleged fugitive from justice, whenever the executive authority of any State demands such person as a fugitive from justice, and produces a copy of an indictment found, or affidavit made, before a magistrate of any State, charging the person demanded with having committed a crime therein, certified as authentic by the Governor or Chief Magistrate of the State from whence the person so charged has fled. It must appear, therefore, to the Governor of the State to whom such a demand is presented, before he can lawfully comply with it, first, that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled, by an indictment or an affidavit, certified as authentic by the Governor of the State making the demand; and, second, that the person demanded is a fugitive from the justice of the State the executive authority of which makes the demand. The first of these prerequisites is a question of law, and is always open

upon the face of the papers to judicial inquiry, on an application for a discharge under a writ of *habeas corpus*. The second is a question of fact, which the Governor of the State upon whom the demand is made must decide, upon such evidence as he may deem satisfactory. How far his decision may be reviewed judicially in proceedings in *habeas corpus*, or whether it is not conclusive, are questions not settled by harmonious judicial decisions, nor by any authoritative judgment of this court. It is conceded that the determination of the fact by the executive of the State in issuing his warrant of arrest, upon a demand made on that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the removal until the presumption in its favor is overthrown by contrary proof. *Ex parte Reggel*, 114 *U. S.* 642."

Replying to the suggestion, in that case, that the fugitive was not within the demanding State subsequent to the finding of the indictment, the court further said: "The appellant in his affidavit does not deny that he was in the State of New York about the date of the day laid in the indictment when the offense is alleged to have been committed, and states, by way of inference only, that he was not in that State on that very day; and the fact that he has not been within the State since the finding of the indictment is irrelevant and immaterial. To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another." To the same effect are *Ex parte Brown*, 28 *Fed. Rep.* 653, 655; *In re White*, 55 *Fed. Rep.* 54, 57; *In re Bloch*, 87 *Fed. Rep.* 981, 983. It is suggested that *Roberts* v. *Reilly* was substantially modified in *Streep* v. *United States*, 160 *U. S.* 128, 134, in which the court had occasion to construe section 1045 of the Revised Statutes. But this is an error. Interpreting the words "fleeing from justice" as found in that section, the court expressly held that these words must receive the same construction as was given in *Roberts* v. *Reilly* to like words in section 5278 of the Revised Statutes, the inquiry in that case being whether the accused was a fugitive from justice.

In support of his contention, the appellant refers to *Hyatt* v. *Corkran*, 188 *U. S.* 691. That was the case of an arrest in New York, under the warrant of the Governor of that State, of an alleged fugitive from the justice of Tennessee, in which State he stood charged by indictment with crime committed in that State. This court said (p. 719) that as the alleged fugitive "showed, without contradiction and upon conceded facts,

that he was not within the State of Tennessee at the times stated in the indictment found in the Tennesse court, nor at any time when the acts were, if ever committed, he was not a fugitive from justice within the meaning of the Federal statute upon that subject, and upon those facts the warrant of the Governor of the State of New York was improperly issued, and the judgment of the Court of Appeals of the State of New York, discharging the relator from imprisonment by reason of such warrant, must be affirmed." The present case is a wholly different one; for here the presumption arising from the recitals in the warrant of arrest in favor of its validity was not overthrown by the proof; on the contrary, it appeared, by a preponderance of evidence, that the accused was in the State of New York when the alleged crime was committed.

Similar views to those expressed in *Roberts* v. *Reilly* have been expressed by State courts. In *Kingsbury's* case, 106 *Mass.* 223, 227, 228, the contention of the fugitive from justice was that, as she went into the demanding State and returned to her home in the other State before the alleged crime was known, she could not be deemed to have fled from justice. But the court said: "The material facts are, that the prisoner is charged with a crime in the manner prescribed, and has gone beyond the jurisdiction of the State, so that there has been no reasonable opportunity to prosecute him after the facts were known. The fact in this case, that she returned to her permanent home, cannot be material. . . It is sufficient that the crime of larceny has been properly charged, and that the prisoner is a fugitive, and a requisition has been properly made." In *State* v. *Richter*, 37 *Minn.* 436, 438, the contention was that to constitute a fugitive from justice a person must have left the State where the crime was committed for the purpose of escaping the legal consequences of his crime. Referring to *Roberts* v. *Reilly*, above cited, as authoritative and binding, and as in accordance with its own views, the Supreme Court of Minnesota well said: "The sole purpose of this statute, and of the constitutional provision which it was designed to carry into effect, was to secure the return of persons who had committed crime within one State, and had left it before answering the demands of justice. The important thing is not their purpose in leaving, but the fact that they had left, and hence were beyond the reach of the process of the State where the crime was committed. Whether the motive for leaving was to escape prosecution or something else, their return to answer the charges against them is equally within the spirit and purpose of the statute; and the simple fact that they are not within the State to answer its criminal process, when required, renders them, in legal intendment, fugitives from justice, regardless of their purpose in leaving." In *Voorhees* case, 32 *N. J. L.* 141, 150, the court said: "A person who commits a crime within a State, and withdraws himself from such jurisdiction without waiting to abide the consequences of such act, must be regarded as a fugitive from the justice of the

State whose laws he has infringed. Any other construction would not only be inconsistent with good sense, and with the obvious import of the word to be interpreted in the context in which it stands, but would likewise destroy, for most practical purposes, the efficacy of the entire constitutional provision." In *Ex parte Swearingen*, 13 *S. C.* 74, 80, the court held that the terms fugitive from justice "were intended to embrace not only a case where a party after committing a crime actually *flees*, in the literal sense of that term, from the State where such crime was committed, but also a case where a citizen of one State, who, within the territorial limits of another State, commits a crime, and then simply returns to his own home. The object of the Constitution was to enable a State whose laws had been violated, to secure the arrest of the person charged with such violation, even though such person might be beyond the reach of the ordinary process of such State." In *Mohr's* case, 73 *Ala.* 503, 512, the court, referring to the words in the Constitution, "who shall flee from justice and be found in another State," said: "There is a difference of opinion as to what must be the exact nature of this flight on the part of the criminal, but the better view, perhaps, is that any person is a fugitive within the purview of the Constitution, 'who goes into a State, commits a crime, and then *returns* home.'" In *Hibler* v. *State*, 43 *Tex.* 197, 201, the court said: "The words 'fugitive from justice,' as used in this connection, must not be understood in a literal sense, but in reference to the subject-matter, considering the general object of the Constitution and laws of the United States in relation thereto. A person who commits a crime in one State for which he is indicted, and departs therefrom and is found in another State, may well be regarded as a fugitive from justice in the sense in which it is here used."

Referring to the opinion in *Pettibone* v. *Nichols*, just decided, for a further discussion of the general subject, and perceiving no error in the action of the Circuit Court, its final order is

Affirmed.

True copy.

Test:

Clerk Supreme Court U. S.